

# One-Stop Guide to Accessibility and Accommodation of Persons with Disabilities

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Preface

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### **HOW THE GUIDE IS STRUCTURED**

The One-Stop Guide to Accessibility and Accommodation of Persons with Disabilities has been prepared to assist One-Stop Operators, partners, and other WIA Title I grant recipients with understanding and complying with federal disability regulations. The guide is structured from the large picture of employment and training legislation, disability regulations, and definitions to the increasingly narrower topics of nondiscrimination in policies and procedures, nondiscriminatory employment practices, program and facility access, access to communications, and discrimination complaint resolution. The guide employs non-legalistic language to help the reader to understand the legal requirements of nondiscrimination and equal opportunity.

At the same time, the guide is intended to lead readers beyond understanding, to be able to conduct a comprehensive assessment of their programs and to ensure that they are fully in compliance with the nondiscrimination regulations. Beginning in chapter three, the guide contains step by step instructions to assist an Access Team in assessing each of the areas of policies, employment practices, program and facility access, and access to communications to ensure accessibility and the reasonable accommodation of persons with disabilities. Worksheets are included at the end of Chapters Three through Seven to assist users in One-Stop entities in the self-assessment process. The worksheets are intended as basic guides that should be adapted to suit a recipient's specific requirements and administrative structure. The following summarizes the content of each chapter to assist the reader in locating particular information.

### **Chapter One: One-Stop Delivery System and Persons with Disabilities**

This chapter explains the goals of the Workforce Investment Act of 1998 and the design of the One-Stop delivery system. It briefly discusses the nondiscrimination and equal opportunity provisions contained in Section 188 of the Workforce Investment Act of 1998, paying particular attention to the entities covered by Section 188. It provides critical definitions of "programs and activities;" also of "aids, benefits,

services, and training;" and notes the relationship of Section 188 to the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973.

## **Chapter Two: Protections and Reasonable Accommodation for Persons with Disabilities**

This chapter begins with a discussion of the critical definition of a "qualified individual with a disability." It mentions who and under what circumstances is eligible to file a complaint of discrimination. Next, the chapter details what discriminatory actions are prohibited and provides numerous examples, specific to the context of workforce development. Finally, it includes definitions and examples of reasonable accommodation and reasonable modification. Exclusions from this definition are identified, as well as common misunderstandings; and, fundamental alterations and undue burdens/hardships, which could relieve an entity of its obligation to provide a reasonable accommodation, are explained in this chapter.

## **Chapter Three: Ensuring Compliance**

This chapter will help in planning a One-Stop Center's approach to ensuring compliance with Section 188. It begins with mention of the required areas of compliance and a focus on the critical role of the Equal Opportunity Officer, required for entities that have more than 15 employees or serve more than 15 individuals in a program year. It identifies principles and best practices of successful compliance, and suggests action steps to bring about compliance. A three-phase process for completing a self-assessment is outlined, beginning with the planning phase and proceeding through the self-assessment to the execution of modifications.

Worksheets provide a structure to assist the Access Team in tracking progress through the start-up phase; forming the compliance team; developing a comprehensive list and summary of programs, activities, and services; and defining and monitoring the compliance process.

## **Chapter Four: General Nondiscrimination Requirements**

This chapter reviews begins with a more detailed discussion of five of the required areas of nondiscrimination requirements. They are called "affirmative obligations" that are required of any WIA Title I grant recipient. Following this

discussion, the guide leads access teams through the first part of their self-assessment, focusing on the policies and practices of their organization.

Worksheets provide a structured framework for evaluating the recipient's provision of the affirmative obligations and for assessing policies and procedures for their compliance with nondiscrimination requirements.

## **Chapter Five: Employment Policies and Practices**

This chapter explains federal regulations for the full range of employment issues and activities. Among the topics addressed are: recruitment, hiring, medical inquiries and examinations, on-the-job benefits, opportunities for advancement, and training opportunities. Special attention is given to the requirement to provide "reasonable accommodation" for qualified applicants and employees with disabilities. This chapter illustrates the concept of "undue hardship" in the context of employment practices.

Worksheets are provided to assist a recipient in evaluating all aspects of employment relationships to ensure compliance. The worksheets specifically address advertising, application forms, interviews, medical examinations, health insurance and other benefits, personnel policies, job tests, and reasonable accommodations.

## **Chapter Six: Program and Facility Accessibility**

This chapter describes the program accessibility requirements, along with the closely related matter of access to facilities. The chapter clarifies requirements for accessibility both in existing facilities and in new construction. It discusses and illustrates options for making programs accessible, addressing both administrative and architectural solutions. In addition, it clarifies relevant regulatory provisions related to leased space and historic properties.

Worksheets structure the review process by providing forms for use in conducting the building inventory and noting inaccessible features, developing nonstructural solutions to providing access, and identifying the architectural features that must be addressed to remove barriers to access.

## **Chapter Seven: Requirements for Effective Communication**

This chapter explains and illustrates the requirements for effective communication for persons with visual, hearing, speech, cognitive, and mobility disabilities. The chapter suggests a variety of auxiliary aids and services that are available to ensure effective communication. Alternatives are suggested for visual communication, aural/oral communication, and to assist persons with cognitive impairments. Specific requirements regarding telecommunication devices for the deaf (TTY/TDDs) are also explained, as are the requirements for telephone emergency services and signage. Finally, the chapter explains the concepts of "fundamental alteration" and "undue burden," as they pertain to the area of communication access.

Worksheets presented at the end of the chapter are designed to help conduct the self-assessment. Recipients can use them to assess their current capacity to provide effective communication to persons with disabilities and to support the development of an action plan to achieve compliance.

## **Chapter Eight: Compliance Procedures**

This chapter reviews the procedures for compliance and enforcement under Section 188 and the remedies available in the event that recipients or entities are determined not to be in compliance. The chapter then outlines the process for filing complaints and addresses miscellaneous provisions related to compliance and enforcement.

## **Resources**

This section identifies sources of information and assistance on particular issues related to the access and reasonable accommodation self-assessment.

## **CITATIONS**

This Guide contains numerous references to the Code of Federal Regulations (CFR), the multi-volume codification of regulations issued by the federal government. A citation "29 §37.11" means Title 29 of the Code of Federal Regulations, Part 37, Section 11.

The Guide also contains references to the United States Code (USC.), the multi-volume codification of statutes, or laws, passed by Congress. A citation "42 USC 12102" means Title 42 of the United States Code, Section 12102.

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## CHAPTER ONE: One-Stop Delivery System and Persons with Disabilities

DRAFT, 7/25/2000

### The Workforce Investment Act of 1998

In effect since August 7, 1998, the Workforce Investment Act represents the culmination of a generation of workforce development legislation. Through a succession of initiatives, from the Employment Act of 1946, the Manpower programs of the 1960s, CETA in the 1970s, and the JTPA programs of the 1980s and 90s, the federal government has taken a role in assisting employers in meeting their need for skilled workers and in meeting the needs of individuals for training, education, and employment. The Workforce Investment Act (WIA) represents a refinement of the process of workforce development, incorporating best practices and innovations that were piloted in every region of the country.

Among the organizing principles of the WIA is the principle of universal access.<sup>1</sup> Unlike JTPA, which narrowly prescribed services to economically disadvantaged adults and those who faced significant barriers to employment, a set of core services under WIA are intended to be available for any individual. A second principle of access of WIA is the One-Stop delivery of services. Previously dispersed programs of federal assistance are required to locate under a single roof for ease of access and enhanced customer service.

The One-Stop delivery system is a component of a larger, federal-state-local employment and training effort. Federal financial assistance flows from the Department of Labor to the states, which, apportion it to Local Workforce Investment Areas (LWIAs). Local Workforce Investment Boards (LWIBs) are responsible, among other things, for selecting One-Stop operators and providers (e.g., youth providers, eligible providers for intensive services). Each level – the State, the LWIA the One-Stop operator One-Stop partners, and other service providers -- has an obligation to ensure that the One-Stop delivery system's programs and activities operate consistent with the requirements of WIA.

#### 29 USC 2811

The purpose of this subtitle is to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation.

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<sup>1</sup>Use of the term, "universal access" in the context of the Workforce Investment Act is different from the usage of the same term within the disabilities community, where it is generally synonymous with "universal design."

## Nondiscrimination and Equal Opportunity Provisions

During the same period that workforce development has been refined, there has been a refining process of the nation's nondiscrimination and disability legislation. A series of legislation has enacted prohibitions on discrimination based on race, color, religion, sex, national origin, age, disability, political affiliation or belief. Workplace discrimination has been a key area of concern in many of the statutes. Landmarks in nondiscrimination and equal opportunity legislation include the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Education Amendments of 1972, and the Rehabilitation Act of 1973. In the area of disability, the legislation culminated in the Americans with Disabilities Act of 1990.

Core principles of equal opportunity and disability legislation are the right of access and the right to participate. The ADA requires reasonable accommodation on the part of public entities to ensure these rights to persons with disabilities.

### Section 188

In the Workforce Investment Act of 1998, Section 188 contains the nondiscrimination and equal opportunity provisions.<sup>2</sup> Section 188 makes clear that enforcement is to be consistent with the four civil rights laws mentioned above and is explicit in naming grounds for discrimination that are prohibited (29 CFR § 37.5). For employment, these include:

- race
- color
- religion
- sex
- national origin
- age
- disability
- political affiliation
- belief

For program participation, discrimination is prohibited on the same grounds, along with the additional grounds of:

- citizenship

#### **29 CFR § 37.1 What is the purpose of this part?**

The purpose of this part [29 CFR Part 37] is to implement the nondiscrimination and equal opportunity provisions of the Workforce Investment Act of 1998 (WIA), which are contained in section 188 of WIA. Section 188 prohibits discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only,

#### **29 CFR § 37.2 To whom does this part apply, and what is the scope of this part?**

Title I financially assisted program activity. This part clarifies the application of the nondiscrimination and equal opportunity provisions of WIA and provides uniform procedures for implementing them.

(1) Any recipient, as defined in Sec. 37.4.

(2) Programs and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners listed in section 121(b) of WIA, to the extent that the programs and activities are being conducted as part of the One-Stop delivery system; and

(3) The employment practices of a recipient and/or One-Stop partner, as provided in Sec. 37.10.

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<sup>2</sup>The complete text of WIA Section 188 appears as Appendix A to this manual.

- participation in a WIA Title I-financially assisted program or activity.

Section 188 is regulated at 29 CFR Part 37: Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998; Final Rule. ***It is the purpose of this guide to assist One-Stop Centers with understanding and complying with Section 188 and the regulations of 29 CFR Part 37, as they pertain to persons with disabilities.***

## Who Must Comply?

Compliance with the nondiscrimination regulations of Section 188 and 29CFR Part 37 is required of all recipients of WIA Title I financial assistance as well as any program or activity that is part of a One-Stop delivery system and operated by a One-Stop partner.

The term “recipient” applies broadly. Recipients include:

- The Governor and the administrative entity at the State level that administers (or is financed in whole or in part by), WIA Title I funds;
- The local-level entities that receive or administer WIA Title I funds;
- Entities below the local (or in some cases the State) level that provide aid, services, benefits or training under WIA Title I;
- The Employment Service and Unemployment Insurance programs; and
- One-Stop partners, including programs that receive financial assistance, not from the Department of Labor, but from other sources, such as another Federal department), to the extent that the partner participates in the One-Stop delivery system.

It is important to note the distinction between **“recipients,”** which are the entities that administer or operate the One-Stop delivery system, and the ultimate **“beneficiaries,”** who are the individuals intended by Congress to receive aid, benefits, services, or training from the recipients. It is the recipients that must comply with the nondiscrimination requirements of 29 CFR Part 37; beneficiaries are not required to do so.

The requirement to comply with Section 188 extends to the programs and activities that are offered to the public as well

## 29 CFR § 37.2

**Recipient** means any entity to which financial assistance under WIA Title I is extended, either directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIA Title I-funded program or activity. In instances in which a Governor operates a program or activity, either directly or through a State agency, using discretionary funds apportioned to him or her under WIA Title I, the State may disburse the funds to another recipient, but is not limited to the Department of Labor. This part does not apply to agencies that administer, or are the recipients of, financial assistance with, financial assistance by the Department of Labor, and that are not part of the One-Stop delivery system including programs or activities implemented under, authorized by, and One-Stop partners; assisted by the Department, including all Title I training contracts of insurance or guaranty; (3) The ultimate beneficiary to this program of Federal financial assistance; (4) State, local, and center operated, procurement contracts, with the exception of contracts for purposes of this part, to One-Stop partners, as defined in 29 CFR 29.101, are treated as “recipients,” and are subject to the nondiscrimination requirements of this part. The operating Department is responsible for ensuring that the One-Stop delivery system, opportunity laws to which such Centers are subject.



as to the employment practices of recipients and One-Stop partners. The message is comprehensive: if it is a One-Stop partner, or if it is conducted as part of a One-Stop service, program, or activity, it must comply with the nondiscrimination and equal opportunity requirements of Section 188.

## Limitations of Application

There are a few special cases where compliance may not be required or application of Section 188 provisions may be limited. These include 1) programs or activities that are assisted by the Department of Labor exclusively under laws other than WIA and that are not part of One-Stop delivery of services; 2) contracts of insurance or guaranty; 3) the One-Stop customers; 4) federal procurement contracts except those pertaining to Job Corps Centers; and 5) Job Corps Centers. In each of these special cases, compliance with nondiscrimination provisions is governed by other legislation or codes [29 CFR § 37.2].

## Programs and Activities

The Section 188 regulations define a WIA Title I-funded program or activity as 1) any aid, benefits, services, or training to individuals that is operated by a recipient and funded, in whole or in part, under Title I of WIA. WIA Title I-funded programs and activities also include 2) the facilities where the aid, benefits, services, or training are furnished, 3) any other aid, benefits, services, or training conducted in facilities that were constructed with the aid of WIA Title I financial assistance; as well as 4) any aid, benefits, services, or training that are funded by a source other than WIA Title I, but required to meet matching requirements under WIA Title I [29 CFR §37.4].

It is important to note that this definition includes two specifications of facilities. First are any facilities where WIA Title I-funded aid, benefits, services, or training are conducted. Second are all of the activities that are conducted at facilities that are themselves constructed with the aid of WIA Title I financial assistance. The common theme is WIA Title I financial assistance. Whether the program is operated, or the facility constructed with the assistance of WIA Title I funds, it is considered subject to the provisions covering WIA Title I-funded programs and activities. Ensuring program and facility accessibility is the

### 28 CFR §37.4

*WIA Title I-funded program or activity means:*

- (1) A program or activity, operated by a recipient and funded, in whole or in part, under Title I of WIA, that provides either:
    - (i) Any aid, benefits, services, or training to individuals; or
    - (ii) Facilities for furnishing any aid, benefits, services, or training to individuals;
  - (2) Aid, benefits, services, or training provided in facilities that are being or were constructed with the aid of Federal financial assistance under WIA Title I; or
  - (3) Aid, benefits, services, or training provided with the aid of any non-WIA Title I funds, property, or other resources that are required to be expended or made available in order for the program to meet matching requirements or other conditions which must be met in order to receive the WIA Title I financial assistance.
- See the definition of "aid, benefits, services, or training" in this section.

focus of the self-assessment activities presented in Chapter Six of this guide.

## **Aid, Benefits, Services, and Training**

As mentioned above, it is all of the programs and activities conducted by recipients that must be fully accessible to the public, including persons with disabilities. In the Section 188 regulations, these programs and activities are generally referred to as the aid, benefits, services, or training that a recipient provides to beneficiaries.<sup>3</sup> The phrase, "aid, benefits, services, or training" is intended to be broadly inclusive. Though not limiting it to them, the definition of aid, benefits, services, or training specifies that it includes:

- Core and intensive services;
- Education or training;
- Health, welfare, housing, social service, rehabilitation, or other supportive services;
- Work opportunities; and
- Cash, loans, or other financial assistance to individuals.

Under federal regulations, the term "program or activity" embraces all of the aid, benefits, services, or training offered by a recipient in fulfillment of its mission. It spans all offerings open to any of the audiences served by a recipient. The following, though not exhaustive, are examples of programs or activities that, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities: education and training; programs; food services; library and resource room services; health services; counseling; recreation; transportation; vocational programs; apprenticeship programs; and employer recruitment opportunities.

## **Other Rules, Codes, and their Priority**

29 CFR Part 37 lists at least a dozen other federal laws with which recipients, One-Stop partners, and service providers may be required to comply. The array can at first seem dizzying. Part 37 attempts to clarify the compliance process. In general, following 29 CFR Part 37 will bring a recipient or

### **29 CFR § 37.4**

Aid, benefits, services, or training means WIA Title I--financially assisted services, financial or other aid, or benefits provided by or through a recipient or its employees, or by others through contract or other arrangements with the recipient. ``Aid, benefits, services, or training" includes, but is not limited to:

- (1) Core and intensive services;
- (2) Education or training;
- (3) Health, welfare, housing, social service, rehabilitation, or other supportive services;
- (4) Work opportunities; and
- (5) Cash, loans, or other financial assistance to individuals.

As used in this part, the term includes any aid, benefits, services, or training provided in or through a facility that has been constructed, expanded, altered, leased, rented, or otherwise obtained, in whole or in part, with Federal financial assistance under Title I of WIA.

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<sup>3</sup>Aid, benefits, services, or training is also applied to a recipient's employees. An assessment of employment practices to ensure that employees or employment applicants with disabilities receive a recipient's full aid, benefits, services, or training is the topic of Chapter Five.

One-Stop service provider into equal opportunity and nondiscrimination compliance.

The three primary codes that regulate nondiscrimination for LWIA recipients, One-Stop partners and service providers are Section 188 of WIA, Title II of the ADA of 1990 and Section 504 of the Rehabilitation Act of 1973, as amended. Yet these are not largely different nor conflicting codes. The regulations of 29 CFR Part 37 include definitions of such key terms as disability, reasonable accommodation, and qualified individual that are taken verbatim from the ADA. They are talking about the same thing using the same terms.<sup>4</sup> In addition, 29 CFR Part 37 sets forth that compliance with its terms will satisfy the implementing regulations of Title VI of the Civil Rights Act of 1964 and Subparts A, D, and E of the implementing regulations of Section 504 of the Rehabilitation Act of 1973. (29 CFR § 37.3 (a)).

Recipients should know that there are significant areas of overlap among the statutes and regulations, yet their overall intent is consistent. Moreover, most of what a recipient, partner, or service provider will need to know or do to comply with equal opportunity and nondiscrimination codes is included in 29 CFR Part 37.<sup>5</sup> Many of the federal agencies, themselves aware of the overlapping areas of jurisdiction, are in the process of developing Memoranda of Understanding (MOUs) among themselves to assign primary responsibility in key areas and create a simpler compliance process for the public.

A good rule of thumb, however, when approaching multiple codes and regulations is to adhere to the most stringent. 29 CFR Part 37 conveys this rule a number of times. It specifies that compliance with this part does not in any way affect any additional obligation under other federal statutes, nor does it preempt consistent State and local requirements. (29 CFR § 37.3 (c), (d), (e), and f)). Moreover, State or local laws can

**29 CFR § 37.16 What is this part's effect on a recipient's obligations under other laws, and what limitations apply?**

(a) Effect of State or local law or other requirements. The obligation to comply with the nondiscrimination and equal opportunity provisions of WIA or this part are not excused or reduced by any State or local law or other requirement that, on a prohibited ground, prohibits or limits an individual's eligibility to receive aid, benefits, services, or training; to participate in any WIA Title I--financially assisted program or activity; to be employed by any recipient; or to practice any occupation or profession.

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<sup>4</sup>Appendix 2 contains a side-by-side listing of the topics that are common between 29 CFR Part 37 and the regulations governing the Americans with Disabilities Act of 1990, which are codified at 28 CFR Part 36.

<sup>5</sup>Recipients that are also public entities or public accommodations, as defined by Titles II and III of the Americans with Disabilities Act of 1990 should be aware of obligations imposed by those titles. Similarly, recipients that are also employers, employment agencies, or other entities covered by Title I of the ADA should be aware of obligations imposed by that title.

not excuse compliance with nondiscrimination requirements.  
(29 CFR § 37.16 (a)).

### **Section 167 of The Job Training Partnership Act**

Section 188 of WIA is patterned after §167 of JTPA. Similarly, regulations implementing §188 are patterned after 29 CFR part 34, which implements JTPA §167. Therefore, for those entities which have been working with JTPA programs and activities, the design, administrative requirements and nondiscrimination obligations of part 37 will be familiar.

## Appendix A

[note to reviewers: the following pages of appendices will be relocated to the end of the finished document.]

### SEC. 188. NONDISCRIMINATION.

#### (a) IN GENERAL.--

(1) FEDERAL FINANCIAL ASSISTANCE.--For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), on the basis of sex under title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), programs and activities funded or otherwise financially assisted in whole or in part under this Act are considered to be programs and activities receiving Federal financial assistance.

(2) PROHIBITION OF DISCRIMINATION REGARDING PARTICIPATION, BENEFITS, AND EMPLOYMENT.--No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.

(3) PROHIBITION ON ASSISTANCE FOR FACILITIES FOR SECTARIAN INSTRUCTION OR RELIGIOUS WORSHIP.--Participants shall not be employed under this title to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship (except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants).

(4) PROHIBITION ON DISCRIMINATION ON BASIS OF PARTICIPANT STATUS.--No person may discriminate against an individual who is a participant in a program or activity that receives funds under this title, with respect to the terms and conditions affecting, or rights provided to, the individual, solely because of the status of the individual as a participant.

(5) PROHIBITION ON DISCRIMINATION AGAINST CERTAIN NONCITIZENS.--Participation in programs and activities or receiving funds under this title shall be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States.

(b) ACTION BY THE SECRETARY.--Whenever the Secretary finds that a State or other recipient of funds under this title has failed to comply with a provision of law referred to in subsection (a)(1), or with paragraph (2), (3), (4), or (5) of subsection (a), including an applicable regulation prescribed to carry out such provision or paragraph, the Secretary shall notify such State or recipient and shall request that the State or recipient comply. If within a reasonable period of time, not to exceed 60 days, the State or recipient fails or refuses to comply, the Secretary may --

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or

(2) take such other action as may be provided by law.

(c) ACTION OF ATTORNEY GENERAL.—When a matter is referred to the Attorney General pursuant to subsection (b)(1), or whenever the Attorney General has reason to believe that a State or other recipient of funds under this title is engaged in a pattern or practice of discrimination in violation of a provision of law referred to in subsection (a)(1) or in violation of paragraph (2), (3), (4), or (5) of subsection (a), the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(d) JOB CORPS.—For the purposes of this section, Job Corps members shall be considered as the ultimate beneficiaries of Federal financial assistance.

(e) REGULATIONS.—The Secretary shall issue regulations necessary to implement this section not later than one year after the date of the enactment of the Workforce Investment Act of 1998. Such regulations shall adopt standards for determining discrimination and procedures for enforcement that are consistent with the Acts referred to in subsection (a)(1), as well as procedures to ensure that complaints filed under this section and such Acts are processed in a manner to avoid duplication of effort.

## Appendix B

### COMPARISON BETWEEN WIA §188 AND TITLE II REGULATIONS

The regulations implementing WIA §188 (29 CFR part 37) and Subtitle A of Title II of the ADA (28 CFR part 35) are very similar. The following chart is a section by section comparison of subject matter:

#### REGULATORY CROSS REFERENCE GUIDE

<b>Subject</b>	<b>Workforce Investment Act of 1998 Section 188 29 CFR part 37 29 CFR part 32, Subparts B and C</b>	<b>Americans with Disabilities Act of 1990 Title II 28 CFR part 36</b>
Purpose	§37.1-What is the purpose of this part?	§35.101-Purpose
Applicability, Scope	§37.2-To whom does part apply, and what is the scope of this part?	§35.102-Application
Affect on other obligations	§37.3-How does this part affect a recipient's other obligations?	§35.103-Relationship to other laws
Definitions	§37.4-What definitions apply to this part?	§35.104-Definitions
General prohibition of discrimination	§37.5-What forms of discrimination are prohibited by this part?	§35.130-General prohibitions against discrimination (paragraph (a))
Specific discriminatory actions (non-disability)	§37.6-What specific discriminatory actions, based on prohibited grounds other than disability, are prohibited by this part?	Not Applicable
Specific discriminatory actions (disability)	§37.7-What specific discriminatory actions, based on disability are prohibited by this part?	§35.130(b)-General prohibitions against discrimination (paragraph (b))
Reasonable accommodation and reasonable modification	§37.8-What are a recipient's responsibilities regarding reasonable accommodation and reasonable modification for individuals with disabilities	

Effective communication	§37.9-What are a recipient's responsibilities to communicate with individuals with disabilities?	Subpart E-Communication
Employment	§37.10-To what extent are employment practices covered by this part?	Subpart C-Employment
Intimidation and retaliation	§37.11-To what extent are intimidation and retaliation prohibited by this part?	§35.134-Retaliation or coercion
Agency authority and coordination	§§37.12, 37.13, 37.14, 37.15	Subpart G
Rule's effect on other obligations	§37.16-What is this part's effect on a recipient's obligation under other laws and what limitations apply?	§35.103-Relationship to other laws
Assurances	§§37.20 through 37.22	Not addressed
Equal Opportunity Officer	§§37.23 through 37.28	§35.107-Designation of responsible employee and adoption of grievance procedures (paragraph(a))
Notice and Communication	§§37.29 through 37.36	35.106-Notice
Data and Information Collection and Maintenance	§§37.37 through 37.41	Not addressed
Universal Access	§37.42	Not addressed
Governor's responsibility to Implement	Subpart C	Not addressed
Complaint procedures	§§37.76 through 37.78	§35.107-Designation of responsible employee and adoption of grievance procedure (paragraph(b))
Enforcement	Subpart E	Subpart F



Employment and Employment Related Training	Subpart B, 29 CFR part 32	Not addressed
Access to programs and Activities	Subpart C, 29 CFR part 32	Subpart D-Program accessibility
Physical accessibility; architectural standards	Subpart C, 29 CFR part 32	Subpart D-program accessibility

## **CHAPTER ONE: One-Stop Delivery System and Persons with Disabilities**

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## CHAPTER TWO: Protections and Reasonable Accommodation for Persons with Disabilities

DRAFT, 7/25/2000

This chapter presents three questions and their answers as a way to focus on some of the major themes of disability protection and reasonable accommodation. It reviews important definitions and provides an orientation to some of the major provisions of Section 188 and 29CFR Part 37. The first question asks **who** is protected from discrimination as a person with a disability. The discussion leads to the second question, **what** are forms of discrimination based on disability that are prohibited. The third question probes **reasonable accommodation**, along with reasonable modification and auxiliary aids and services, all of which are crucial elements in insuring that persons with disabilities receive full and equal access to all WIA Title I aids, benefits, services, and training.

### A. WHO ARE INDIVIDUALS WITH DISABILITIES WHO ARE PROTECTED UNDER SECTION 188?

WIA Section 188 protects persons with disabilities from discrimination, applying the same standards and definitions as found in Section 504 of the Rehabilitation Act of 1973. Moreover, these are the same standards and definitions found in the Americans with Disabilities Act of 1990 (ADA). WIA Section 188, Section 504, and the ADA prohibit discrimination against any "qualified individual with a disability." Determining whether a particular individual is protected by these laws begins with understanding what is considered a disability (and what is not). Then the question is asked, "Who is a **qualified** individual with a disability?"

#### DISABILITY -- THREE CONDITIONS

For the purposes of coverage under WIA §188, an individual with a disability is defined as an individual who meets any one (or more) of the three conditions (sometimes referred to as "prongs" of the definition) outlined in the statute. Each component (prong) of the definition is explained in part 37. This definition is identical to the ADA definition of the term.

#### 29 CFR §37.4

*Disability* means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

## 1. A Physical or Mental Impairment

The first category of the definition covers any individual who currently has a physical or mental impairment that substantially limits one or more major life activities. The focus of this part is on the individual, to determine if he or she has a substantially limiting impairment.

***What is an impairment?*** The phrase *physical or mental impairment* has been defined by the provision of the regulation cited above to include physiological conditions that affect body systems as well as mental or psychological disorders. The definition at §37.4 provides only representative examples of physical or mental impairments.

***What is not an impairment?*** Simple physical characteristics such as left-handedness, disadvantages attributable to environmental, cultural, or economic factors; common personality traits such as poor judgment or a quick temper. The definition also excludes homosexuality and bisexuality as impairments

### ***What is a substantial limitation of major life activities?***

Another key requirement under the first category of the definition is that an impairment must substantially limit a major life activity to constitute a disability. The phrase *major life activities* refers to functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, working, and learning.

This list of ***major life activities*** is not meant to be exhaustive. They are understood to include "those basic activities that the average person in the general population can perform with little or no difficulty." For example, in a 1998 Supreme Court decision, the court determined that reproduction is a major life activity.

In contrast, determining whether or not an impairment ***substantially limits*** a major life activity is more difficult and must be done on an individual basis, taking into consideration the following factors:

- the **extent** of the impairment, its nature and severity;
- the **duration** (or expected duration) of the impairment, how long it will last or is expected to last; and
- the **impact** of the impairment, its permanent or long-term impact or expected impact.

### **29 CFR §37.4**

(1)(i) The phrase *physical or mental impairment* means--  
(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine;  
(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.  
(ii) The phrase *physical or mental impairment* includes, but is not limited to, such contagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. The phrase "physical or

### **29 CFR §37.4**

(2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

While the definition of disability does not exclude temporary impairments, temporary impairments must be assessed on a case-by-case basis to determine whether the impairment substantially limits a major life activity.

## **2. Persons With Records of Physical or Mental Impairments**

The second category of the definition of disability protects two groups of people: those who have a history or record of an impairment that substantially limits a major life activity; and, those who have been erroneously diagnosed as having an impairment. Examples include: persons who have been misdiagnosed as mentally retarded or mentally ill.

## **3. Persons Regarded as Having a Disability**

The third category of the definition of disability protects people who are not, in fact, substantially limited in any major life activity but are nevertheless perceived by others as having a disability, sometimes because of myth, fear, or stereotype.

The second and third categories of the definition are meant to cover situations where individuals never had or do not currently have disabilities, but are treated by others as if they did. For instance, a person with severe facial scarring might be denied a job because she or he is regarded as an individual with a disability. A person with a history of heart disease might be denied a promotion because of that "record of" a disability. These persons do not, in fact, have disabilities, but have been treated by others as if they did. In these cases, it is mistaken perception or a record of a disability that entitles a person to protection against discrimination under the law.

## **Use of the Second and Third Categories**

The use of the second and third categories of the definition of individuals with disabilities arises often in the area of employment, but can also apply in the areas of aid, services, benefits or training. For example, someone with a history of mental illness but no current symptoms might be denied a teaching job based solely on that record of past disability. This action would not be permissible under WIA 188.

### **29 CFR 37.4**

(4) The phrase *is regarded as having an impairment* means--

- (i) Has a physical or mental impairment that does not substantially limit major life activities, but that is treated by the recipient as being such a limitation;
- (ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
- (iii) has none of the impairments defined in paragraph (1) of this definition but is treated by the recipient as having such an impairment.

Individuals with learning difficulties or attention deficit disorder (ADD) meet the first category of the definition of disability. That is, they actually have a mental or physical impairment that substantially limits their ability to learn.

### WHAT DOES IT MEAN TO BE QUALIFIED?

Protection under WIA 188 is specifically afforded to *qualified* individuals with disabilities. Not every person with a disability (someone who falls within the three-category definition) is also qualified. The definition of a *qualified* individual with a disability takes two forms, depending on the nature of the activity involved. These include:

- aid, services, benefits or training; and
- employment.

### Aid, Services, Benefits or Training

For purposes of determining whether an individual is eligible to receive the aid, services, benefits, or training offered by a recipient, a person is considered to be qualified if the individual meets the **essential eligibility requirements** needed to receive the aid, services, benefits or training. It does not matter whether the person meets these requirements with or without **reasonable accommodation or modifications** to rules, policies, or practices or with or without the removal of architectural, communication, or transportation barriers. The determination is also made without regard to whether **auxiliary aids and services** must be provided [28 CFR §35.104].

It is also important to note that persons who wish to attend One-Stop Center events or activities, who are qualified individuals with disabilities, are covered by Section 188, as well as other nondiscrimination statutes and regulations. For example, if a One-Stop Center were to host a job fair, the Center would need to assure the availability of interpreter services and materials in alternative formats.

### Employment

For the purposes of employment, an individual is considered to be qualified if the person meets the job-related requirements for a job and is able to perform its essential functions with or without reasonable accommodations [29 CFR §37.4].

### 29 CFR 37.4

*Qualified individual with a disability* means:

- (1) With respect to employment, an individual with a disability who, with or without reasonable accommodation, is capable of performing the essential functions of the job in question;
- (2) With respect to aid, benefits, services, or training, an individual with a disability who, with or without reasonable accommodation and/or reasonable modification, meets the essential eligibility requirements for the receipt of such aid, benefits services, or training.

## ASSOCIATIONAL DISCRIMINATION

Section 188 also extends its protections to people who do not have disabilities themselves but are discriminated against on the basis of their association with a person with a disability. The association can be with family members, friends, or any other person or entity [29 CFR 37.7(l)]. A person who experiences associational discrimination has a right to relief under the Section 188, but is not, like persons who themselves have disabilities, entitled to request reasonable accommodations in employment.

### WHO IS ELIGIBLE TO FILE A SECTION 188 COMPLAINT?

The 29CFR Part 37 regulations provide a detailed process to allow individuals who believe they have been discriminated against to register complaint with the Department of Labor's Civil Rights Center. The complaint process is described in greater detail in chapter 8 of this guide.

## RETALIATION OR COERCION

An entity may not retaliate against or coerce any individual because that individual took action to oppose any act or practice prohibited by WIA §188, or because that individual assisted or encouraged others in exercising their rights under WIA §188. Prohibited actions include threats, intimidation, harassment, or interference.

## EXCLUSIONS FROM PROTECTION

### A Direct Threat to Health or Safety

One factor to be considered in determining whether a person is a qualified individual with a disability is the health or safety of others. Under the WIA §188 and applicable disability laws, if an individual with a disability poses a *direct threat* to the health or safety of others, then that person is not a qualified individual with a disability. Such a person has not met an essential eligibility requirement for the receipt of services or participation in programs or activities of a recipient.

The determination that an individual with a disability poses a direct threat to the health or safety of the individual or of others may not be based on stereotypes. The decision must

### 29 CFR 37.7(l)

A recipient must not exclude, or otherwise deny equal aid, benefits, services, training, programs or activities to, an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

### 29 CFR §37.70

#### Who may file a complaint concerning discrimination connected with WIA Title I?

Any person who believes that either he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIA or this part may file a written complaint, either by him/herself or through a representative.

### 28 CFR §37.11

(a) A recipient must not discharge, intimidate, retaliate, threaten, coerce or discriminate against an individual because the individual has:

(1) Filed a complaint alleging a violation of Section 188 of WIA or this part;

(2) Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIA or this part;

(3) Furnished information to, or assisted or participated in any manner in, an investigation, review, hearing, or any other activity . . .

(4) Otherwise exercised any rights and privileges under the nondiscrimination and equal opportunity provisions of WIA . . .

(b) The sanctions and penalties contained in Section 188(b) of WIA or this part may be imposed against any recipient that engages in any such retaliation or intimidation, or fails to take appropriate steps to prevent such activity.

be based on an individualized assessment of the person's present condition, not on speculation about any future risk. It must also be based on reasonable judgment founded on medical evidence or on the best available objective evidence. Factors to be considered in determining whether an individual poses a direct threat to health and safety include:

- the duration, nature, and severity of the potential harm;
- the likelihood the potential injury will occur;
- the imminence of the potential harm; and
- whether a reasonable accommodation (in an employment context), or reasonable modification in policies, practices, or procedures, or the provision of auxiliary aids and services, will mitigate or eliminate the risk.

### CONDITIONS NOT CONSIDERED DISABILITIES

29 CFR §37 explicitly excludes the following conditions from the term disability: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from the current illegal use of drugs [29 CFR §37.4]. Moreover, the phrase "physical or mental impairment" does not include homosexuality or bisexuality; those orientations are not considered disabilities under WIA §188, section 504 or the ADA. However, where these individuals also have physical or mental conditions that do constitute disabilities under WIA §188, section 504 or the ADA, they may not be discriminated against on the basis of the covered disability.

### Current Illegal Use of Drugs Not Protected

Although an individual addicted to drugs may be an individual with a disability, persons who are **currently** engaging in the illegal use of drugs are not protected by WIA §188, section 504 or the ADA. Thus, a recipient may withhold services or benefits from a person because of his or her current illegal use of drugs. By contrast, a person with a history of drug use who has been successfully rehabilitated, or someone who is participating in a drug rehabilitation program and is **not** currently using drugs illegally, is protected.

### Use of Alcohol

#### 29 CFR 37.4

(2) The term "individual with a disability" also does not include an individual who is currently engaged in the illegal use of drugs, when a recipient acts on the basis of such use. This limitation does not exclude as an individual with a disability an individual who:

- (i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;
- (ii) Is participating in a supervised rehabilitation program; or
- (iii) Is erroneously regarded as engaging in such use.



Alcoholism can be a disability covered by the ADA. If a person's alcoholism substantially limits a major life activity, that person has a disability under the ADA. Employers may prohibit the use of alcohol by all employees at the workplace and may hold an alcoholic employee to the same performance and conduct standards that apply to all employees [29 CFR §1630.16(b)].

Under Section 188 persons who are alcoholics, whose current use of alcohol prevents their performing the duties of their job or constitutes a direct threat to the property or safety of others, **are not** considered to be persons with a disability in the context of employment. In other words, beneficiaries who are alcoholics, are entitled to the same aid, benefits, services, or training that are due any other person with a disability. However, if seeking employment or currently employed by a recipient, these persons are not entitled to the protections of other persons with disabilities. They may not claim their alcoholism as a disability in the employment context.

#### **29 CFR 37.4**

(2) With regard to employment, the term "individual with a disability" does not include any individual who:

- (i) Is an alcoholic:

  - (A) Whose current use of alcohol prevents such individual from performing the duties of the job in question, or
  - (B) Whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others; . . .

### **Contagious Disease or Infection Not Considered Disabilities in Employment Context**

Likewise, Section 188 does not consider as disabling conditions **in the context of employment** any currently contagious diseases or infections that prevent an individual from performing job duties or that constitute a direct threat to the health and safety of others. As in the previous case, beneficiaries of aid, benefits, services, or training, who have currently contagious diseases or infections, may qualify for the protections due to persons with disabilities under Section 188, but employees or employment applicants do not qualify for this protection— unless they have some other basis for being considered persons with disabilities.

#### **29 CFR 37.4**

(2) With regard to employment, the term "individual with a disability" does not include any individual who:

- (ii) Has a currently contagious disease or infection, if:

  - (A) That disease or infection prevents him or her from performing the duties of the job in question, or
  - (B) His or her employment, because of that disease or infection, would constitute a direct threat to the health and safety of others.

### **U.S. Citizenship Not Required for Protection**

A person does **not** have to be a United States citizen to be covered by section 504 or WIA §188. In fact, WIA §188 prohibits discrimination on the ground of citizenship (see the definition of the term "discrimination on the ground of citizenship" in 29 CFR 37.4).

## **B. WHAT DISCRIMINATORY ACTIONS ARE PROHIBITED?**

## General Prohibitions Against Discrimination

Discrimination against persons with disabilities is prohibited by WIA Section 188 as part of a broader prohibition against discrimination on numerous grounds [29CFR §37.5]. In addition, it includes an entire section detailing specific prohibited discrimination based on disability [29CFR §37.7].

### Applicability

A WIA Title I recipient must ensure that no qualified individual with a disability is, on the basis of disability, excluded from participation in or denied any benefit of its aid, benefits, services, or training, or subjected to any other discrimination [29CFR §37.7(a)(1-6)].

The requirement to ensure that qualified individuals with disabilities are not discriminated against in the workforce investment system is applicable to the aids, benefits, services, or training that are provided directly by the One-Stops, as well as those operated or provided by another entity on behalf of the Local Workforce Investment Area (LWIA) under contractual or other arrangements. This means that it is necessary to evaluate the aids, benefits, services, and training that are provided by all entities on behalf of the LWIA through contractual or other arrangements as well as those provided directly by the One-Stop Center.

For example, a One-Stop Center that operates its own GED-prep program may not exclude individuals with disabilities from participating in the program. If the same One-Stop Center contracted with a private provider to deliver this training program, it continues to be responsible for the assurance of nondiscrimination on the part of the contractor. Accordingly, if the contractor excluded a student from service on the basis of the student's disability, the One-Stop Center would be liable for that discrimination.

## BASIC EQUAL OPPORTUNITY REQUIREMENTS

### Denial of Opportunity to Participate or Benefit Prohibited.

A recipient must ensure that no qualified individual with a disability is, on the basis of disability, excluded from participation in, or denied any benefit of, its aid, benefit, services, or training, or subjected to any other

#### **29 CFR §37.5 What forms of discrimination are prohibited by this part?**

No individual in the United States may, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIA Title I--financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIA Title I--funded program or activity.

#### **29 CFR §37.7(a)(1)**

In providing any aid, benefits, services, or training under a WIA Title I-financially assisted program or activity, a recipient must not directly or through contractual, licensing, or other arrangements, on the ground of disability: (1) deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefits, services, or training.

discrimination [29 CFR §37.7(a)(1)]. This means that, in providing general benefits and services, a One-Stop Center must take steps to ensure that a qualified individual with a disability is not denied the opportunity to participate in any of its programs or to benefit from any aid, benefit, service, or training that it provides.

### **Provision of Unequal Opportunity or Benefit Prohibited**

A recipient must also ensure that, in providing general services and benefits, a qualified individual with a disability is provided an opportunity to participate in its programs that is **equal** to the opportunity that is provided to nondisabled persons to participate. A One-Stop Center must also ensure that a qualified individual with a disability is provided with an opportunity to benefit from any aid, benefit, service, or training that is provided under its programs that is equal to the opportunity that is provided to nondisabled individuals.

For example, an individual with a profound hearing disability is being evaluated for intensive services, and it is determined that, in order for them to benefit from these services, that reasonable accommodations, including a sign language interpreter or other appropriate accommodation, must be provided. The One-Stop, citing expense, refuses to pay for the sign language interpreter. The One-Stop would be in violation of Section 188.

### **Provision of Benefit or Service That Is Not Equally Effective Prohibited**

In providing general services and benefits, a One-Stop Center must ensure that services provided to qualified individuals with disabilities are effective enough to afford equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as nondisabled individuals.

For example, a Welfare-to-Work participant with a learning disability is evaluated, and it is determined that she can participate in a remedial education program with certain modifications, such as being permitted additional time in which to take tests. Any action inconsistent with this determination, such as an instructor's denial of additional time to take a test, would result in provision of training to this individual that was not effective enough to afford her an equal

#### **29 CFR §37.7(a)(2)**

In providing any aid, benefits, services, or training under a WIA Title I-financially assisted program or activity, a recipient must not directly or through contractual, licensing, or other arrangements, on the ground of disability afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others

#### **29 CFR §37.7(a)(3)**

In providing any aid, benefits, services, or training under a WIA Title I-financially assisted program or activity, a recipient must not directly or through contractual, licensing, or other arrangements, on the ground of disability afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or reach the same level of achievement as that provided to others.

opportunity to reach the same level of achievement as nondisabled participants.

## **Programs**

Under Section 188, a recipient may not operate separate or different programs, or provide separate or different aids, benefits, services, or training within programs, for individuals with disabilities, unless such aids, benefits, services, or training are necessary to provide assistance to persons with disabilities that are equally as effective as those provided to nondisabled persons [29 CFR §37.7(a)(4)]. Even when separate aids, benefits, services, or training are permitted under Section 188, a recipient must provide them in the most integrated setting appropriate to the needs of qualified individuals with disabilities [29 CFR §37.7(d)].

Separate programs may not be established based on stereotypes or presumptions about what a class of individuals with disabilities can or cannot do. However, even where the recipient operates a permissibly separate program or offers a permissibly separate service or benefit, it may not deny participation in the regular program or provision of the regular service or benefit to any qualified individual with a disability [29 CFR 37.7(c)].

It is also important to note that persons with disabilities have the right to decline accommodations, aids, or services, including those that might be offered to individuals with disabilities participating in regular programs [29 CFR §37.7(0)(1)]. For example, a person with a hearing impairment may choose to decline special front-row seating at a One-Stop related activity. However, if individuals decline accommodations necessary to enable them to participate in a program and are unable to meet the essential eligibility requirements of the program without the accommodations, they would not be "qualified individuals with disabilities." Of course, individuals with disabilities have the right to provide their own accommodations, aids and services, which may enable them to be qualified to participate in a program.

## **Denial of Board Membership Prohibited**

A local One-Stop system is overseen by the Local Workforce Investment Board (LWIB). In addition, One-Stop partners often have advisory boards and there may be

### **29 CFR §37.7(a)(4)**

In providing any aid, benefits, services, or training under a WIA Title I-financially assisted program or activity, a recipient must not directly or through contractual, licensing, or other arrangements, on the ground of disability provide different, segregated, or separate aid, benefits, services, or training to individuals with disabilities, or to any class or individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, services or training that are as effective as those provided to others;

### **29 CFR §37.7(c)**

A recipient must not deny a qualified individual with a disability the opportunity to participate in WIA Title I-financially assisted programs or activities despite the existence of permissibly separate or different programs or activities.

### **29 CFR §37.7(a)(5)**

In providing any aid, benefits, services, or training under a WIA Title I-financially assisted program or activity, a recipient must not directly or through contractual, licensing, or other arrangements, on the ground of disability deny a qualified individual with a disability the opportunity to participate as a member of planning or organizing boards; or

planning or coordinating committees associated with the operation of a One-Stop or one of its entities. Participation on any of these boards is to be afforded to persons with disabilities. They must not be denied participation on a board on grounds of their disability.

### **Limitations on Enjoying Advantages, Opportunities, or Benefits Prohibited**

In general, persons with disabilities are to be afforded every opportunity, advantage, privilege, and right that is available or enjoyed by persons without disabilities through the aids, benefits, services, and training provided by recipients through the One-Stop system.

### **Surcharges Prohibited**

Section 188 prohibits placing surcharges on individuals with disabilities to cover the cost of measures necessary to provide nondiscriminatory treatment [29 CFR §37.7(k)]. This means, for example, that a One-Stop Center that provides an auxiliary aid or service to an individual with a disability in order to enable that individual to effectively participate in the program, may not charge the individual for the auxiliary aid or service. A Center may, however, charge individuals with disabilities the same fees for services, programs, and events that it charges individuals without disabilities.

### **Eligibility Criteria**

The Workforce Investment System may not use eligibility criteria for participation in its programs or receipt of its benefits or services that directly or indirectly screen out individuals with disabilities, or that directly or indirectly cause individuals with disabilities to be denied full and equal participation, services, or benefits, **unless** the eligibility criteria are necessary for the provision of the service, program, or activity being offered [29 CFR§37.7(i)].

A One-Stop Center may impose legitimate safety requirements necessary for the safe operation of its aids, benefits, services, or training. However, any safety requirement must be based on actual risks, and not on speculation, stereotypes, or generalizations about individuals with disabilities.

For example: A One-Stop Center sponsors training in

#### **29 CFR §37.7(a)(6)**

In providing any aid, benefits, services, or training under a WIA Title I-financially assisted program or activity, a recipient must not directly or through contractual, licensing, or other arrangements, on the ground of disability otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service or training.

#### **29 CFR §37.7(i)**

A recipient must not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity, unless such criteria can be shown to be necessary for the provision of the aid, benefit, service, training, program, or activity being offered.

computer repair. The application states that individuals with disabilities must submit a doctor's certificate indicating that they are able to participate in the course. The One-Stop can make no showing that this blanket requirement is essential. This type of eligibility requirement is in violation of Section 188.

### **Effect of Policies and Practices (Standards, Procedures, Criteria, Methods of Administration)**

A recipient may not use "**standards, procedures, criteria or methods of administration**" that result in discrimination on the basis of disability [29 CFR §37.7(e)]. A recipient may not have written policies or actual operating practices that exclude qualified individuals with disabilities directly on the basis of their disability. The requirement prohibiting standards, procedures, criteria or methods of administration that have the effect of discriminating on the basis of disability means that a recipient may not use policies or practices--even where they are not stated in terms of prohibiting participation on the basis of disability or where they are not intended to prohibit or limit participation on the basis of disability--that cause qualified individuals with disabilities to be denied an equal opportunity to participate in a program or to benefit on an equal basis under the program.

#### **29 CFR §37.7(e)**

A recipient must not directly or through contractual, licensing, or other arrangements, use standards, procedures, criteria, or administration methods:

- (1) That have the purpose or effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;
- (2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the WIA Title I-financially assisted program or activity with respect to individuals with disabilities; or
- (3) That perpetuate the discrimination of another entity if both entities are subject to common administrative control or are agencies of the same state.

### **Selecting Sites and Locations**

In determining the site or location of a facility, a One-Stop Center may not select a site or location that: (1) has the effect of excluding individuals with disabilities, denying them benefits, or otherwise subjecting them to discrimination; or (2) has the purpose or effect of defeating or substantially impairing the accomplishment of the disability-related objectives of the service, program, or activity with respect to individuals with disabilities [29 CFR 37.7(f)]. Thus, the site selection procedures of a Workforce Investment Board should routinely include an assessment of whether the terrain or any other feature of a site or location under consideration would have any adverse effect on participation by qualified individuals with disabilities.

The requirements concerning the selection of sites and locations do not apply to construction of additional buildings at an existing site. However, any such facilities must be made

accessible in accordance with the requirements for new construction discussed in Chapter Six.

### **Significant Assistance to Entities That Discriminate**

Recipients must identify agencies, organizations, and persons to whom they provide "significant assistance" and determine whether, through that assistance, they may be aiding or perpetuating discrimination against qualified individuals with disabilities [29 CFR §37.7 (b)].

For example, a One-Stop Center permits a national service organization to establish a tutoring and mentoring program for "at-risk" youth. The One-Stop learns that the organization plans to ask youth who apply to the program whether they are HIV-positive and to screen applicants out of the program on that basis. The One-Stop Center provides publications, supplies, and space. The Center must inform the organization that it cannot provide "significant assistance" to an organization that discriminates on the basis of disability. If the organization does not eliminate the discriminatory criterion for participation, the One-Stop must terminate its relationship with the organization.

### **Procurement Contracts**

A One-Stop Center may not discriminate on the basis of disability in the selection of contractors in any procurement [29 CFR §37.7(g)].

### **Licenses or Certification**

A recipient that operates a licensing or certification program may not discriminate against qualified individuals with disabilities on the basis of disability in its licensing and certification activities [29 CFR §37.7(h)]. A recipient may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability.

### **Exceeding the Section 188 Requirements**

Section 188 permits a public entity to provide benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by the regulation [29 CFR §37.7(j)]. This

#### **29 CFR §37.7(b)**

(b) A recipient must not, directly or through contractual, licensing, or other arrangements, aid or perpetuate discrimination against qualified individuals with disabilities by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefits, services or training to registrants, applicants, or participants.

#### **29 CFR §37.8(a)**

With regard to aid, benefits, services, training, and employment, a recipient must provide reasonable accommodation to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship.

means that One-Stop Centers may provide programs, services, and benefits that are designed only to benefit individuals with disabilities without incurring additional obligations to nondisabled persons or to other classes of individuals with disabilities.

### C. WHAT ARE REASONABLE ACCOMMODATIONS?

#### Requirement to Provide Reasonable Accommodation and Reasonable Modification

Reasonable Accommodation and Reasonable Modification are similar terms that are used when describing procedures and remedies for ensuring the participation of persons with disabilities. Reasonable Accommodations are those things which are provided to the qualified person with a disability--ordinarily based upon their request--to enable their participation. Reasonable Modifications are those things which a recipient must make to its policies, practices, or procedures to avoid discrimination on the basis of disability.

Section 188 requires recipients to make those modifications to policies, practices, or procedures that are necessary to avoid discrimination on the basis of disability [29CFR §37.8(b)]. In addition, it requires meeting the requests of persons with disabilities for reasonable accommodations to enable their participation in the aids, benefits, services, training, or employment that the recipient provides [29CFR §37.8(a)]. Under the ADA, reasonable accommodation is required in the area of employment. Under Section 188, the requirement to provide reasonable accommodations is extended to all of the aids, benefits, services, or training that may be provided through the One-Stop system.

#### Reasonable Accommodation Defined

The definition of Reasonable Accommodation in 29CFR Part 37 includes a wide range of areas in which accommodation is frequently sought. Recipients are required to make reasonable accommodation for qualified applicants, registrants, and employees with disabilities who request such accommodation. Reasonable accommodation in the program environment means modification or adjustment to an application/registration process or to the customary manner in which aid, benefits, services, or training are given that enable a qualified individual with a disability to enjoy the same

#### 29 CFR §37.4

*Reasonable accommodation.*

(1) The term "reasonable accommodation" means:

- (i) Modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training, or employment that the qualified applicant/registrant desires; or
- (ii) Modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities.

#### 29 CFR §37.8(b)

*Reasonable modifications in policies, practices, or procedures when the modification is necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service program or activity.*

- (A) The environment where work is performed or aid, benefits, services, or training are given; or
- (B) The customary manner in which, or circumstances under which, a job is performed or aid, benefits, services, or training are given; or
- (iii) Modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aids, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities.



benefits and privileges as individuals without disabilities. Reasonable accommodation in the employment environment means modification of the job application process, the way in which a job is customarily performed, or employment policies that enable a qualified individual with a disability to be considered for the position, perform the essential functions of the job, or enjoy benefits and privileges of employment equal to those available to a similarly-situated employee without a disability [29 CFR §37.4].

## Reasonable Accommodation and Accessibility

In addition to the definitions and particular regulations regarding reasonable accommodation in 29CFR Part 37, the preamble includes a discussion of the relationship between reasonable accommodation and accessibility. The distinction between these two is that the requirement to provide accessible programs and accessible buildings requires a recipient to take advance action to ensure that they are ready when persons with disabilities seek aid, benefits, services, training, or employment from the recipient. The requirement to provide reasonable accommodation for a person with a disability is one that becomes activated when a person with a disability does come and present the recipient with specific needs in order to take advantage of the aid, benefits, services, training, or employment that the recipient is offering. Accessibility requires advance preparation and readying; accommodation requires adjustment within the context of delivering specific aid, benefits, services, training, or employment to a particular individual with a disability.

## Examples of Reasonable Accommodation

Examples of reasonable accommodations in the program environment include, along with making facilities accessible, also restructuring a service or the way in which aid, benefits, or training are provided; making appropriate adjustment or modifications to examinations, training materials, or policies; providing readers or interpreters; and other similar accommodations for individuals with disabilities.

Examples of reasonable accommodation in the work environment include adjusting work schedules, restructuring the job, reassigning the employee, acquiring or modifying equipment and devices, providing qualified readers or

### 29CFR §37: Supplementary Information

Under the requirements of Section 188 of WIA and this part, as well as under other Federal civil rights laws and their implementing regulations, a recipient must provide both accessible facilities (that is, accessibility and architectural accessibility) and reasonable accommodation for individuals with disabilities. It is important to understand the difference between these two requirements. Providing accessible facilities requires a recipient to take advance actions. In order to be ready when persons with disabilities seek aid, benefits, services, training, or employment from the recipient, a recipient must ensure that its facilities are accessible to individuals with disabilities in the future. See the discussion of "accessibility" in the way in which aid, benefits, or training are provided; participants may request a reasonable accommodation for an individual with a disability requires the recipient to make efforts to meet the specific needs of the particular individual who is currently seeking aid, benefits, services, training, or employment from the recipient. Readers or interpreters and other similar accommodations to meet the needs of a particular individual for access.

interpreters, or modifying the work site [29 CFR §1630.2(o)(2)].

**1.) Modifying in the way in which training is provided.**

Modifications of training delivery may include more frequent breaks, repetition of key points, and utilization of a variety of media in training sessions.

Luisa, the clerical skills trainer has been informed that Anne, a welfare-to-work participant who will be taking part in the training, has informed her job counselor that she has a mild form of Attention Deficit Disorder (ADD). Anne has trouble concentrating for long periods of time, and has trouble digesting/comprehending information that is spoken to her. After consulting with a local community based organization that focuses on learning disabilities, Luisa modified the training to add an additional break in the morning and afternoon, concluded each morning and afternoon session with a reiteration of the major points from the day's lesson, made key points through visual and oral presentation, and provided a number of hands-on in-class exercises. Anne is excelling in the clerical skills training program and the One-Stop Center is fulfilling its obligation to provide reasonable accommodation.

**2) Adjusting work schedules.** Recipients, in their employment practices, should consider modification of a regular work schedule as a reasonable accommodation unless this would cause an undue hardship. Modified work schedules may include flexibility in work hours or the work week, or part-time work, where this will not be an undue hardship.

For example, Jean, a job counselor with a mental disability, requires two hours off, twice weekly, for sessions with a psychiatrist. She requests a reasonable accommodation. The One-Stop Center permits Jean to take longer lunch breaks and to make up the time by working later on those days. The One-Stop is fulfilling its obligation to provide reasonable accommodation.

Although employers may be required to make adjustments in leave policy as a reasonable accommodation in some instances, employers are not required to provide additional paid leave for employees with disabilities as an accommodation.

**3) Restructuring the job.** Job restructuring as a reasonable accommodation may involve reallocating or redistributing the marginal functions of a job. Although a recipient, as an employer, is not required to reallocate essential functions of a job as a reasonable accommodation, it may be a reasonable accommodation to modify the essential functions of a job by changing when or how they are done.

For example, Rob, who had his left arm amputated as a result of an accident, has returned to work in the facilities maintenance department using a prosthesis. He is able to perform all of the essential job functions of his former position. However, Rob is not able to perform the marginal function of operating one piece of equipment that cannot be modified and requires a two-handed, fine motor grasping motion. Since Rob always works as part of a crew, the duties among the crew are re-allocated so that other workers perform that task. The Center is fulfilling its obligation to provide reasonable accommodation.

**4) Reassigning the employee to a vacant position.** Under Title I of the ADA, reassignment may be an appropriate accommodation if an individual is unable to perform the essential functions of his or her current position because of a disability. If there is no other accommodation that will enable the person to perform these functions, or if the employer can prove that other accommodations would pose an undue hardship, reassignment to a vacant position should be considered if the individual is qualified for the position.

**5) Acquiring or modifying equipment and devices.** Purchase of equipment or devices or modifications to existing equipment may be effective accommodations for people with many types of disabilities. There are many devices that make it possible for people to overcome existing barriers to performing functions of a job. These devices range from very simple solutions, such as an elastic band that can enable a person with cerebral palsy to hold a pencil and write, to high-tech electronic equipment that can be operated with eye or head movements by people who cannot use their hands. There are also many ways to modify standard equipment, enabling people with functional limitations to perform jobs effectively and safely.

Creative analysis of job requirements often results in effective low-cost accommodations. The following are examples of

effective uses of low-cost assistive devices that would be considered reasonable accommodations:

- Wrist supports for use while typing (available for under \$30) and adjustment of the height of the desk chair may enable a clerk/typist with carpal tunnel syndrome (an inflammatory disease that affects the wrists, typically as a result of repetitive motion) to do his or her job with minimal stress on his or her wrist joints.
- A trackball may be used instead of a "mouse" to enable an individual with poor hand-eye coordination to control the movement of the cursor on a computer screen.

It is important to note that many types of equipment and devices that are effective accommodations for employees with visual, hearing or speech disabilities--such as large print displays on computer monitors, screen readers, TTY/TDDs, and telephone amplifiers--also constitute **auxiliary aids and services** that are designed to provide effective communication. Auxiliary aids and services that are used to provide effective communication are discussed in greater detail in Chapter Seven on communication.

**6) Providing qualified readers and interpreters.** It may be a reasonable accommodation to provide a qualified reader for a qualified individual with a visual disability or a qualified interpreter for a qualified individual with a hearing disability, if such an accommodation does not impose an undue hardship. Identifying the needs of the individual in either program or employment situations will determine whether or when a reader or interpreter is needed. Few tasks require a full-time employee for reading or interpreting. A reader or an interpreter may be a part-time employee or a full-time employee who performs other duties. Readers and interpreters must read and interpret well enough, respectively, to enable the employee with disabilities to perform his or her job effectively or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities. A qualified interpreter must be able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

Qualified readers and interpreters are also examples of auxiliary aids and services that may be used to provide effective communication, as discussed more fully in Chapter Seven.

**7) Modifying the work site.** Employers are obligated to provide access for individual job applicants with disabilities to enable them to participate in the job application process. When an employee with a disability is hired, an employer may have to modify the work site to enable him or her to perform essential job functions. In addition, employees with disabilities must be able to readily access all facilities used by employees, whether essential to job functions or not--for example, the employee lounge or cafeteria.

For example Peter, who uses a wheelchair, is hired as an administrator. He is unable to enter the building where he is assigned, which has two steps between the lobby entrance and the elevators. He is also unable to sit comfortably at his desk because it is too low to the floor. The One-Stop Center constructs a ramp in the lobby to provide an accessible route for Peter. His desk is raised on concrete blocks to accommodate the height of his wheelchair. These worksite modifications fulfill the center's duty to provide reasonable accommodation.

## **Personal Devices and Services**

It is important to understand that a recipient is obligated to provide only program-related job-related accommodations. The requirement to provide reasonable accommodation does not include providing personal devices or services to assist an individual in daily activities, such as wheelchairs, prescription eyeglasses or hearing aids, prostheses, readers for personal use or study, or assistance in toileting, dressing, or eating [29CFR §37.7].

## **Choosing the Accommodation**

Title I of the ADA specifies that an employer is obligated to accommodate only known disabilities of qualified applicants or employees [29 C.F.R. §1630.9(a)]. The responsibility for providing an accommodation is triggered when an individual with a disability makes a request for an accommodation. The person making the request will often be able to suggest an appropriate accommodation.

Not all employees with disabilities require accommodations. For other employees, the need for accommodation may be obvious. If an employee with a known disability is having difficulty performing the job without an accommodation, the employer may ask the employee whether he or she is in

### **29 CFR §37.4 (3)**

To determine the appropriate reasonable accommodation, it may be necessary for the recipient to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

### **29 CFR §37.7 (o)(1)**

(o)(1) Nothing in this part requires an individual with a disability to accept an accommodation, aid, benefit, service, training, or opportunity provided under WIA Title I or this part that such individual chooses not to accept.

need of an accommodation. Under Section 188, a qualified individual with a disability is not required to accept the offer of an accommodation [29CFR §37.7(o)(1)]. However, if such an offer is rejected and the person cannot then perform the essential functions of the job, the person will no longer be considered a qualified individual with a disability [29 CFR §1630.9(d)].

Once the applicant or employee has requested an accommodation, sufficient information must be gathered to determine the type of accommodation necessary to enable the individual to perform the job. In most instances, the person with a disability is in the best position to identify what is needed. Ask them! When necessary, seek additional information from qualified experts.

An employer need not provide the requested accommodation if an alternative means of accommodation that is less costly, but equally effective, is available. It is mandatory, however, to provide an accommodation that gives a qualified individual with a disability an opportunity to attain the same level of job performance as co-workers with similar skills and abilities.

The Job Accommodation Network (JAN) provides free consulting services for employers, employees, or job-seekers to help them select accommodations to enable persons with disabilities to perform critical job functions. By contacting the JAN, an employer, job-seeker, or a One-Stop recipient can access experienced persons familiar with a large number of accommodations that may be applicable to the barrier an employee must overcome. By far, the majority of accommodations suggested are relatively inexpensive; 31% of those suggested by Network consultants have been free. JAN can be reached toll-free at 1-800-526-7234 or on the internet at <http://www.jan.wvu.edu/english/homeus.htm>.

### **The Counterbalance: Fundamental Alteration or Undue Burden/Hardship**

There is a limit to the accommodation that must be offered by a recipient in the One-Stop delivery system. It occurs when the recipient believes that making the proposed modification or providing the proposed accommodation would result in a fundamental alteration – that is a change in the essential nature of a program or activity – and/or create such additional cost as to become an undue “undue burden or “undue hardship” [29 CFR §37.8(a)]. In the event

#### **29 CFR §37.4**

*Fundamental alteration means:*

(1) A change in the essential nature of a program or activity as defined in this part, including but not limited to an aid, service, benefit, or training; or

(2) A cost that a recipient can demonstrate would result in an undue burden.

(i) In general, “undue hardship” means significant difficulty or expense incurred by a recipient, when considered in light of the factors set forth in paragraph (ii).

that a recipient – either when acting as an employer or when offering aid, benefits, services, or training – believes that the requested accommodation would cause an undue burden, the recipient must follow a three step process that is specified in the regulation. Recipients that believe a proposed accommodation would create a fundamental alteration and/or cause an undue burden must:

- prove that the requested accommodation would result in such hardship; the burden of proof rests with the recipient;
- make their determination only after considering all of the factors that are required by the definition of “undue hardship” and commit their determination, along with the reasons for it, to writing—and provide a copy of the written explanation to the individual or individuals who requested the accommodation;
- take any other action that would not result in the hardship, but would ensure that individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient to the maximum extent possible [29 CFR §37.8].

Fundamental alteration is defined as a “change in the essential nature of a program or activity, including but not limited to an aid, service, benefit, or training; . . . or a cost that would result in an undue burden” [29 CFR §37.4].

“Undue burden/hardship is defined as “significant difficulty or expense incurred by a recipient” in the provision of an accommodation [29 CFR §37.4]. Factors that must be weighed in determining whether a requested accommodation poses an undue hardship include:

- the nature and net cost of the accommodation, taking into consideration the availability of tax credits and deductions and/or outside funding for the accommodation;
- the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons aided, benefitted, served, trained by, or employed at, such facility; and the effect on expenses and resources;
- the overall financial resources of the recipient; the overall size of the recipient; the number of persons aided, benefitted, served, trained, or employed; and the number, type, and location of its facilities;
- the type of operation or operations of the recipient; including the composition, structure, and functions of the

## **29 CFR §37.8(a)**

(1) In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship, the recipient has the burden of proving that the accommodation would result in such hardship.

(2) The recipient must make the decision that the accommodation would cause such hardship only after considering all factors listed in the definition of “undue hardship” in Sec. 37.4. The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the accommodation.

(3) If a requested accommodation would result in undue hardship, the recipient must take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient.

recipient's work force; the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient; and

- the impact of the accommodation upon the operation of the facility; including the impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties; and the impact on the facility's ability to conduct business [29 CFR §37.4].

Under Section 188, the resources that are available to the recipient's specific work site must be considered, in addition to consideration of the resources of the recipient as a whole. The Section 188 regulation also stresses that net cost (taking into consideration the availability of tax credits, tax deductions, and/or outside funding) is a relevant factor.

The determination whether a requested accommodation is reasonable must be made on a case-by-case basis. If providing a particular accommodation would be an undue hardship, the recipient must attempt to identify an alternative accommodation that would not. Title I of the ADA adds the additional option, in cases in which the accommodation would pose an undue hardship for the recipient, the individual with the disability should be given the option of paying for the portion of the cost that constitutes an undue hardship or of providing the accommodation [Appendix to 29 CFR §1630, at 414 (1994)]. It must be clearly understood, however, that this option is to be offered as a last resort and only in cases in which providing the requested accommodation would clearly constitute an undue hardship; it is not to be considered a routine cost-saving strategy.

For example a job counselor with a disability that affects blood circulation requests that the thermostat in her office suite be raised to a certain level to accommodate her disability. However, the temperature she requires for her own comfort is uncomfortably hot for her office mates. The center does not have to provide this accommodation if it would constitute an undue hardship. However, if there is an alternative accommodation that would not be an undue hardship--such as providing a space heater--the recipient must provide that accommodation.

If employees are governed by a collective bargaining agreement, the terms of that agreement may have an impact on whether or not a requested accommodation creates an undue hardship [Appendix to 29 CFR §1630, at 414 (1994)].



## EEOC Guidance to Reasonable Accommodation

The EEOC has developed guidance on reasonable accommodation and undue hardship. The entire EEOC guidance is included as Appendix **XXX** of this document; it is also available through the EEOC website at [www.eeoc.gov/docs/accommodation.html](http://www.eeoc.gov/docs/accommodation.html).

### Qualification Standards and Selection Criteria Permitted

In the area of employment, the ADA makes clear that employers are not prohibited from establishing physical and mental job-related qualification standards--including education, skills, and work experience--necessary for job performance, health and safety [29 CFR §1630.10]. Recipients are entitled to hire the most qualified person able to perform a job.

ADA requirements are designed to ensure that people with disabilities are not excluded from jobs that they can perform. However, qualification standards or selection criteria that screen out or tend to screen out an individual with a disability on the basis of disability are not automatically disallowed if they are demonstrably job-related and consistent with business necessity [29 CFR §1630.10]. **"Job-related"** means that a selection criterion must be a legitimate measure or qualification for the specific job for which it is being used. **"Business necessity"** means that a selection criterion may not exclude an individual with a disability because of the disability unless the criterion relates to the essential functions of the job.

#### **29 CFR §1630.10 Qualification standards, tests, and other selection criteria.**

It is unlawful for a covered entity to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity.

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## CHAPTER THREE: Ensuring Compliance

DRAFT, 7/25/2000

This chapter begins with a discussion of administering the nondiscrimination requirements of WIA Sec 188 and 29 CFR §37. It then describes a practical approach to organizing and implementing each One-Stop delivery system's effort to come into compliance with disability nondiscrimination

### STATE ADMINISTRATIVE DESIGN

As mentioned in Chapter One, the term recipient applies to several levels within the WIA Title I structure for State programs. Generally there are three levels: State, local, and "service provider" level. Part 37 places primary responsibility for nondiscrimination compliance with the Governor. However, since programs and activities at each level are also considered recipients, each of them is required to comply with Section 188 and 29 CFR part 37. Moreover, liability for compliance is assigned "jointly and severally" to the Governor and all recipients [29 CFR §37.52(a)].

### Governors' Responsibilities

Each governor's responsibilities include ensuring nondiscrimination compliance for all State programs and activities that are financially assisted by WIA Title I. To this end, each governor (and State) must prepare a **Methods of Administration (MOA)**, a document that provides a reasonable guarantee that all recipients will comply, and are complying with the nondiscrimination and equal opportunity provisions of WIA [29 CFR 37.54(a)(2)]. Each State is required to prepare and submit the MOA to the US Department of Labor's Civil Rights Center within 180 days of the date the State first becomes subject to this requirement [29 CFR § 37.55].

### Methods of Administration

State Methods of Administration (MOAs) must be prepared in writing. They must address a number of required topics, be signed by the governor, and reviewed periodically. At a minimum, these MOAs must describe how State programs and recipients are providing:

#### 29 CFR §37.51

##### ***What are a Governor's oversight responsibilities?***

The Governor is responsible for oversight of all WIA Title I-financially assisted State programs. This responsibility includes ensuring compliance with the nondiscrimination and equal opportunity provisions of WIA and this part, and negotiating, where appropriate, with a recipient to secure voluntary compliance when noncompliance is found under Sec. 37.95(b).

#### 29 CFR §37.52(a)

(a) The Governor and the recipient are jointly and severally liable for all violations of the nondiscrimination and equal opportunity provisions of WIA and this part by the recipient,...

#### 29 CFR §37.54(a)(1)

(a) (1) Each Governor must establish and adhere to a Methods of Administration for State programs as defined in Sec. 37.4. In those States in which one agency contains both SESA or unemployment insurance and WIA Title I-financially assisted programs, the Governor should develop a combined Methods of Administration.

(2) Each Methods of Administration must be designed to give a reasonable guarantee that all recipients will comply, and are complying, with the nondiscrimination and equal opportunity provisions of WIA and this part.

- Assurance of nondiscrimination and equal opportunity;
- Appointment of an Equal Opportunity (EO) Officer;
- Nondiscrimination and EO notice and communication;
- Data and information collection and maintenance;
- Universal access to programs and activities;
- Governor's administrative oversight responsibilities; and
- Complaint processing procedures [29 CFR §37.54(d)(1)].

Additional elements that must be specified in MOAs include:

- a system for determining whether grant applicants or training providers are likely to conduct their Title I-assisted programs in a nondiscriminatory way;
- a system for periodic monitoring of recipients' compliance with Section 188 and 29 CFR §37;
- reviews of recipients' various policies, plans, and agreements;
- procedures for ensuring nondiscrimination compliance, training of EO officers and recipients' staffs, and corrective actions when they are required; and
- supporting documentation to show that MOA-specified commitments have been and/or are being carried out. [29 CFR §37.54(b)(2)].

One-Stop operators should consult with their State or local workforce investment area EO Officer regarding these administrative obligations.

### **Equal Opportunity Officers**

As mentioned above, one of the basic requirements for administering WIA Title I financially-assisted programs is the appointment of equal opportunity officers. Recipients at each level of the workforce investment system must designate EO officers. The exceptions to this requirement are small recipients (those that serve fewer than 15 beneficiaries within a grant year and employ fewer than 15 employees on any given day during the grant year), and service providers (whose compliance with nondiscrimination and EO provisions must be ensured by the governor or LWIA grant recipient).

The EO officer is responsible for the administration of the recipient's nondiscrimination and equal opportunity obligations under WIA. WIA State level EO Officers are responsible for preparing the MOA [29 CFR §37.25(g)]. The EO Officers have been trained in the preparation of the MOA and have been provided written guidance. The guidance will be

published in the Federal Register. Information about your State's MOA is available from your State's EO Officer.

## **A PROCESS FOR ENSURING COMPLIANCE**

### **Recipient Self-Assessment**

Recipients that have been assisted by Employment and Training legislation prior to the WIA have found it most effective to complete a thorough initial self-assessment and then to establish policies of ongoing assessment or periodic re-assessment to ensure their compliance with disability nondiscrimination. Since there are differences between 29 CFR § 37 and former employment and training nondiscrimination regulations, it is recommended that all recipients conduct a thorough self-assessment at the outset of participation in the WIA. More experienced recipients may recall having gone through a similar process as required by the ADA in the early 1990s. For those that have been through such a process, documentation or approaches that were established may provide a helpful starting point for this new self-assessment.

Recipients that are experienced with the ADA self-evaluation of the early 1990s have found it helpful to conduct their nondiscrimination self-assessments in *three phases*. During the first phase, the EO Officer and his or her staff are appointed, an Access Team Leader may be designated, participants for an access team are identified from among One-Stop partners and the LWIB, and procedures for communication and coordination are established. In the second phase, a comprehensive assessment of current policies, practices, and services is undertaken. In the third phase, the collected information is reviewed and any necessary modifications that were identified during the second phase are carried out.

### **Appointment of the Equal Opportunity Officer**

As mentioned above, the Equal Opportunity (EO) Officer is responsible for the administration of the recipient's nondiscrimination and equal opportunity obligations under WIA. Every recipient is required to designate an EO Officer, with the exception of service providers and those

#### **29 CFR §37.23**

#### **Who must appoint an Equal Opportunity Officer?**

**Small recipient** means a recipient who serves a total of fewer than 15 beneficiaries during the entire grant year, and the responsibilities of small recipients are described in §§37.27 and 37.28. (b) Employs fewer than 15 employees on any given day during the grant year.

recipients that meet the definition of “small recipients.”<sup>1</sup> Small recipients are defined as those that serve a total of fewer than 15 beneficiaries during the entire grant year, and employ fewer than 15 employees on any given day during the grant year [29 CFR § 37.4]. Though small recipients are exempted from having to designate an EO Officer with the full range of responsibilities, they are required to designate an individual who will bear responsibility for developing and publishing complaint procedures and processing complaints [29 CFR §37.27]. The compliance of service providers is to be ensured by the governor or LWIA grant recipient, as specified in a State’s MOA [29 CFR §37.28].

The first step in the compliance process is to determine into which of the three categories a recipient falls: service provider, small recipient, or all other recipients. Small recipients must appoint the required individual who will be responsible for publishing complaint procedures and processing complaints. All other recipients must appoint EO Officers, who become the point of contact for all questions about WIA nondiscrimination and equal opportunity, and who provide overall leadership for the self-assessment process that is described in this guide. Depending upon the recipient and the terms of the state’s MOA, some EO Officers may also have responsibility to ensure the compliance of some or all of the service providers in a given LWIA.

## **The Role and Responsibilities of the EO Officer**

29 CFR §37.15 assigns six responsibilities to EO officers of recipients below the state level:<sup>2</sup>

- 1) serve as the recipient’s liaison with the Civil Rights Center (CRC), which is responsible for monitoring compliance and responding to discrimination complaints under WIA Title I;
- 2) monitor and investigate the activities of the recipient and the activities of the entities that receive WIA Title I funds from the recipients, to ensure that the recipients' and its subrecipients are not violating their nondiscrimination and equal opportunity obligations;

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<sup>1</sup>See the section, “Who Must Comply?” in chapter 1 for the definition and complete listing of recipients under Title I.

<sup>2</sup>State EO Officers are assigned the additional responsibility of overseeing the development and implementation of the state’s MOA [29 CFR §37.25(g)].

- 3) review the recipient's written policies to ensure that those policies are nondiscriminatory;
- 4) develop and publish, the recipient's procedures for processing discrimination complaints;
- 5) report directly to the appropriate official (including, but not limited to, the State WIA Director, Governor's WIA Liaison, Job Corps Center Director, SESA Administrator, or LWIA grant recipient) about equal opportunity matters;
- 6) undergo training (at the recipient's expense) to maintain competency, if the Director of the CRC requires the EO Officer and/or his or her staff to do so [29 CFR §37.25].

In exercising these prescribed responsibilities, the EO Officer has overall responsibility for coordinating the recipient's nondiscrimination obligations. The EO Officer will have both expertise in the areas of equal opportunity and nondiscrimination and ongoing relationships with both state level EO staff and CRC staff. Because of their expertise, the EO Officers will be called upon to answer recipient staff members' questions regarding equal opportunity and nondiscrimination. Moreover, having a single point of contact, at both the recipient and Department of Labor levels, helps to ensure a consistent interpretation and application of the requirements of the nondiscrimination and equal opportunity provisions of WIA and 29 CFR §37.

### **Persons Eligible to Serve as an EO Officer**

Because of the importance of his or her responsibilities, the EO Officer must be a senior-level employee. The recipient must establish clear lines of authority and accountability for its EO activities, and must provide the EO Officer with appropriate levels of support. The EO Officer may be assigned other duties, depending upon the size of the recipient's WIA Title I programs. However, such additional assignments may not create a conflict or the appearance of a conflict with the responsibilities of an EO Officer [29 CFR §37.24].

Recipients are not required to designate a separate or additional EO Officer to implement the nondiscrimination obligations imposed by WIA. Nor is it required to employ a WIA EO Officer to work full-time in that position. Recipients may use existing EO Officers and staff (provided that the EO Officer meets the requirements of §37.24), or assign additional duties to a newly-appointed EO Officer, so long as the EO Officer is able to give priority to, and to fulfill all of,

#### **29 CFR §37.24**

##### **Who is eligible to serve as an Equal Opportunity Officer?**

A senior-level employee of the recipient should be appointed as the recipient's Equal Opportunity Officer. Depending upon the size of the recipient, the size of the recipient's WIA Title I-financially assisted programs or activities, and the number of applicants, registrants, and participants served by the recipient, the EO Officer may, or may not, be assigned other duties. However, he or she must not have other responsibilities or activities that create a conflict, or the appearance of a conflict, with the responsibilities of an EO Officer.

his/her responsibilities under the nondiscrimination and equal opportunity provisions of WIA [29 CFR §37.24].

Along with appointing an EO Officer, recipients have the additional obligations to:

- make the EO Officer's name and his or her position title, address, and telephone number (both voice and TTY/TDD) public;
- ensure that the EO Officer's name and contact information appear on all communications regarding equal opportunity and nondiscrimination programs;
- assign sufficient staff and resources, along with the necessary support of top management to ensure equal opportunity and nondiscrimination compliance;
- provide training for the EO Officer and his/her staff, to ensure their competent exercise of required EO activities [29 CFR §37.26].

The success of a recipient's nondiscrimination and equal opportunity program depends heavily upon the tangible and intangible support that the recipient provides to its EO Officer. The recipient's top management should provide a significant amount of that support. As such, recipients must ensure that the EO Officer and his/her staff are afforded the opportunity to receive the training necessary and appropriate to maintain competency. In addition, recipients are required to pay for any training that the Director of the Civil Rights Center requires of the recipient's EO Officer and staff. Ultimately, the recipient is responsible for ensuring that its EO Officer and staff maintain the level of knowledge, skills, and abilities necessary to carry out their responsibilities fully and effectively. The training needed to maintain such level of competency may be, in particular cases or for particular recipients, more extensive than the training required by the Director. The State EO Officer should be an excellent source for information and assistance in identifying training programs and opportunities for other recipients' EO Officers.

#### **FOUR BEST PRACTICES FOR ENSURING EFFECTIVE COMPLIANCE**

Experience among recipients has shown the following four best practices as keys to an effective compliance process.

- 1) Gain commitment from leaders;
- 2) Coordinate compliance activities;



- 3) Involve people with disabilities; and
- 4) Institutionalize compliance procedures.

Each of these practices will help open doors for persons with disabilities to participate fully in the aid, benefits, services, or training activities of a LWIA recipient. Not only will they help recipients comply with the specific requirements of Federal disability laws, they will also foster an inclusive, hospitable community that will help identify and end other discriminatory practices as well.

***BEST PRACTICE ONE: Gain Commitment from Local Workforce Investment Board and One-Stop Administrators***

It is critical that a leadership commitment be communicated clearly and convincingly to all staff and program participants. When high-level officials in the Workforce Investment System and others in responsible positions assume strong leadership roles, program managers and staff are far more motivated to address nondiscrimination. The senior leadership should remain involved throughout the compliance process, reviewing progress and participating in decision-making at critical points (e.g. approval of budgets for barrier removal).

***BEST PRACTICE TWO: Coordinate Compliance Activities***

Nondiscrimination compliance is a complex process that affects the Workforce Investment System at many levels. Experience indicates that compliance activities are best approached as a coordinated whole; few problems can be effectively remedied through a fragmented effort. Coordination can facilitate the sharing of information and resources, and strengthen accountability. The designation of the EO Officer (or, in the case of small recipients, the individual charged to develop a complaint procedure and to process complaints) is a critical first step in promoting coordination. In addition, the One-Stop Administrator should form a One-Stop Access Team to conduct the assessment.

***BEST PRACTICE THREE: Involve People with Disabilities***

The experience of many communities in complying with the ADA and other disability statutes confirms that cooperation between the disability community and public entities can lead to creative problem solving, improved communications, and mutual understanding. Many associations and advocacy

organizations that serve persons with disabilities would very likely be responsive to calls requesting nominations for committee membership. These groups have frequently made the most effective, least expensive recommendations for modifications, where they have been necessary.

***BEST PRACTICE FOUR: Institutionalize Compliance Procedures***

A recipient's initial assessment will target needed modifications in employment practices, operating procedures, communications, and access to programs and facilities. Ensuring that these modifications are made and that equal opportunity for persons with disabilities is institutionalized is a difficult task.

Success in implementing permanent changes depends to a great extent on the quality of the planning process itself and on the degree to which compliance becomes integrated in ongoing operations. For example, it is important that training be offered to familiarize new employees with nondiscrimination policies and practices. Also, the ADA requires that accessible features, once installed, must be regularly maintained [28 CFR §35.133(a)]. This Guide recommends that Access Teams, composed of individuals representing major organizational divisions and functions, work with the EO Officer to ensure ongoing compliance.

**A THREE-PHASE PROCESS**

As mentioned above, some recipients have found it helpful to divide the self-assessment process into three phases:

- Phase 1: Preparation
- Phase 2: Evaluating policies, practices, and services
- Phase 3: Selecting and implementing modifications

Three Phase Self-Assessment Process		
<b>Phase One: PREPARATION</b>	<b>Phase Two: SELF-EVALUATION</b>	<b>Phase Three: MODIFICATIONS</b>

<ul style="list-style-type: none"> <li>• Appoint EO Officer and Access Team Leader, where appropriate</li> <li>• Gain statement of commitment from Workforce Development System leadership.</li> <li>• Plan assessment process.</li> <li>• Engage appropriate partners and organizations (entities and subrecipients).</li> <li>• Appoint access team members.</li> <li>• Orient/train team members.</li> <li>• Refine compliance process.</li> <li>• List all programs, services, and activities.</li> <li>• Collect summary data for listed programs, services, and activities.</li> </ul>	<ul style="list-style-type: none"> <li>• Assess affirmative obligations: assurances, notices, data collection, universal access, complaint procedures.</li> <li>• Audit programs, services, and activities to ensure nondiscriminatory policies and procedures.</li> <li>• Evaluate employment policies and practices.</li> <li>• Evaluate facilities to ensure access to all programs, services, and activities.</li> <li>• Evaluate communications to ensure they are equally effective for persons with disabilities.</li> </ul>	<ul style="list-style-type: none"> <li>• Modify discriminatory policies and practices.</li> <li>• Plan for ongoing staff orientation.</li> <li>• Make nonstructural modifications.</li> <li>• Develop plan for structural modifications.</li> <li>• Make structural modifications.</li> <li>• Develop communications capacity.</li> </ul>
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### **PHASE ONE: Preparation**

During Phase 1, an Access Team Leader is appointed and placed in position with a strong statement of mission and commitment from the senior leadership of the local Workforce Investment System. For many recipients, the Access Team Leader will be the EO Officer; others will find it more appropriate to appoint a separate individual, who will work as Access Team Leader with the close cooperation and support of the EO Officer. The Access Team Leader becomes thoroughly familiar with the requirements of the regulations through review of materials, training, conversations with peers, and other means. The Access Team Leader will work closely with the EO Officer and will facilitate the defining of the One Stop's compliance process.

### **PHASE TWO: Evaluating Current Policies, Practice, and Services**

During Phase 2, work groups thoroughly investigate how the One-Stop Operator, partners, and service providers currently operate in each of the areas covered by the regulations and document the situation as it exists. Areas to be examined include: required assurances and notices, nondiscrimination policies and procedures in programs and activities; employment; accessibility to facilities where programs, services, and activities occur; and effective communication.

### **PHASE THREE: Selecting and Implementing Modifications**

During this phase, staff training and other internal communication must occur to ensure that everyone understands what changes are made and why. Clear and appropriate training and communication will maximize the support and understanding of the One-Stop Center staff and partners overall, and help ensure that violations do not occur because of lack of knowledge. This training and communication must occur on an ongoing basis, since employees change continually. New employees must be routinely familiarized with their part in ensuring continued compliance.

### **IMPLEMENTING THE PROJECT START-UP**

The Access Team Leader (whether the EO Officer or another person) initiates planning through a series of tasks designed to gain personal familiarity with the legal requirements; to structure and initiate the compliance process; to develop an overview of the recipient's programs, aids, benefits, services, training, and employment; and to complete initial action steps. Substeps may include the following:

#### *Complete Personal Orientation to the ADA and WIA Nondiscrimination and Equal Opportunity Provisions*

- Review the ADA WIA Section 188, 29 CFR §37, other federal disability, regulations, and technical assistance materials.
- Attend an ADA/Section 188 training program (many of the Disability and Business Technical Assistance Centers (DBTACs) are offering training on ADA, Section 188, and serving customers with disabilities).
- Review the disability compliance plans and documents.
- Discuss compliance with key staff and community leaders.

#### *Structure and Initiate the Compliance Process*

- Evaluate personnel and resources needed for the self-assessment and larger compliance process.
- Convene or recruit, orient, and train your Access Team.
- Draft an Access Assessment Plan.

*Develop Overview of One-Stop Center's Partners, Programs  
and Services*

- List programs, services, and activities provided directly by the recipient, by subrecipients, or service providers through the One-Stop Center Program.
- Collect concise descriptions for programs, services, and activities.
- Collect and document policies and practices governing administrative procedures for these programs, services, and activities.

***Resource 3-1, located at the end of this chapter, will help an access team monitor its completion of these initial tasks.***

## **Complete Personal Orientation to Nondiscrimination and EO Requirements**

The Access Team Leader's personal orientation process is extremely important. Where there are two individuals, both the EO Officer and the Access Team Leader, must understand federal nondiscrimination requirements thoroughly. The EO Officer should be able to answer questions from others employed by the One-Stop Center, as well as from those who are served by the programs. As the Access Team Leader begins to accumulate information, it is important to develop an effective filing system that will help to readily access the information that will be needed by the various parties of the One-Stop System. A new EO Officer or team leader is advised to keep record of those who help during these initial stages; this will become the beginning of a network of well-informed and reliable resources who can be contacted when specific issues arise.

## **Structure and Initiate the Compliance Process**

There is no one correct approach to compliance. Each One-Stop System must develop an approach that meets its own needs and those of the community it serves. The following guidance and resources, however, may be helpful in planning an approach.

A ***team approach*** is key to achieving successful compliance for several reasons. First, to complete the self-assessment, information must be collected from *all* of the One-Stop Center's partners, programs, services, and activities. Depending on the size of the center, this is often too large a task for one person. Second, the various components of the self-assessment require varied expertise and specialized

skills. A team approach enables individuals with all of the necessary skills to be involved in the compliance process.

One of the important aspects of the team leader's job is to identify the various players needed for this team effort. While each LWIA, One-Stop Center, or recipient will have its own considerations and requirements regarding team formation, the following criteria should be considered in establishing the compliance team and structure:

1. *Include representatives from all major organizational units.* Each partner, department, agency, or other major organizational unit should designate a liaison to the compliance team. Liaisons should participate in overall planning and decision making, collect information regarding their respective organizations' policies and practices, inform staff within their organizations of nondiscrimination requirements, and serve as contact persons for the public within that organization.

Regardless of the approach that a One-Stop Access Team takes, there are three levels that need to be considered in the process: 1) board or executive-level decisions related to the process; 2) the work of the access team that conducts the self-assessment and makes recommendations; and 3) sub-task groups that may be assigned to individual areas that address specific components of the self-assessment, e.g. employment, program accessibility, policies and practices, and communication. It will be important to ensure adequate representation and information flow at each and among all of the levels.

2. *Include persons with special skills and expertise.* Including staff and/or outside parties with skills and expertise in the following areas will be particularly helpful to the team:
  - capital planning and budgeting;
  - general program operations;
  - communications technology;
  - computer technology; and
  - disabilities.

In addition, representation should include:

- facilities management;
- employment/personnel management;

- finance and budgeting;
- contracts and purchasing;
- transportation; and
- food services.

This list is not intended to be complete; rather, these examples should serve as a starting point for a team planning its particular approach.

3. *Include opinion leaders.* Include "opinion leaders" on the compliance team. People who are respected by their colleagues will strengthen cooperation, improve participation during the compliance process, and promote effective institutionalization of the results.
4. *Involve people with disabilities.* Individuals with disabilities are key to achieving nondiscrimination compliance for several reasons. First, the regulation requires that opportunity be given for people with disabilities to participate on planning or advisory boards [29 CFR §37.7(a)(5)]. Second, involving the end users in the process will generate solutions that are creative and effective. Third, involving people with disabilities in decision-making will strengthen the accountability of the process and ensure wise use of limited public resources.

*However, simply having a disability does not, in and of itself, guarantee that a person will contribute quality input in the self-assessment process.* People chosen to participate should have either disability-oriented expertise or applicable skills that will help address one or more areas of the self-evaluation. An effective participant should be able to represent not only his or her personal perspective, but also that of as broad a constituency as possible within the disability community. The process as a whole should provide for representation of as wide a range of individuals with disabilities as possible.

The experience of many entities has demonstrated that the participation of people with disabilities and disability organizations creates trust and leads to more cost-effective solutions and fewer disputes in the long run.

If a team is unsure of how to identify disability organizations to assist in the self-evaluation, federally funded regional Disability and Business Technical Assistance Centers (DBTACs) may be able to provide a list of organizations in the



local area. Locate the nearest DBTAC through the disAbility online website at <http://www.wdsc.org/disability>.

***Resources 3-2 and 3-3 will assist a One-Stop Center in including all of the partnering organizations and programs in the Access Assessment Process. Resource 3-3 is an inventory of programs and partners, their administrators, along with the designated Access Team liaison to each partnering organization. Resource 3-2 is a listing of Access Team members, their organizational affiliations, and their area of responsibility on the Access Team.***

If the One-Stop structure in an LWIA is particularly large, it may be helpful to designate sub-task groups to perform each of the four areas of the self-evaluation:

- Affirmative Obligations, Policies, and Practices
- Employment
- Program Accessibility
- Communication

Once the One-Stop Access Team membership has been approved by the senior political and executive leadership, the Access Team Leader should set up an initial team meeting for the executive committee and/or the entire access team. In the first meeting it may be useful to provide background information. All team members should receive copies of this self-assessment guide, 29 CFR Part 37, and any draft resources preselected for use in reviewing current procedures, practices, and services. Copies of 29 CFR Part 37 may be obtained in a variety of formats from the CRC. The team can then proceed to review and revise the proposed compliance work plan. Based on the compliance plan, the team can form any additional work groups needed to refine the access process, develop or refine assessment tools, and recruit additional participants. The team should also establish a schedule for conducting assessment activities.

Early on, the team should attend a nondiscrimination training program, either in-house or off-site. ADA and Section 188 training programs are available from a number of sources. Many entities have people on staff, advisory boards, commissions, or nearby community organizations that can contribute to staff development and training. A variety of outside disability-related training opportunities, materials, and consultants may also be available. Referrals to training and consulting sources are available through the regional

Disability and Business Technical Assistance Centers (DBTACs).

A word of caution, however, is in order: An industry of instant experts has sprung up around disability issues. Check references and credentials carefully when selecting disability-related or nondiscrimination training or consultants. For more information, request the "ADA-Related Consultant/Contractor Guidelines" from your regional DBTAC.

Even before the team is assembled, the Access Team Leader may find it helpful to draft a compliance process work plan. Once the access team is in place, it will refine that work plan and, upon approval, proceed to implement it.

### **Develop an Overview of One-Stop Center Programs**

Since some access teams will review compliance efforts throughout an entire Local Workforce Investment Area, team members need a way of "getting the big picture" quickly. Many of them may be thoroughly familiar with their own programs, but not with other programs. One way to gain this familiarity is to ask for preliminary documentation and summaries from each program area. Collect policy statements and procedures manuals. This information will help the team identify potential areas of concern and recognize the unique features of different program areas that must be taken into account as resources are developed or adapted for use in the self-assessment.

The preliminary information collected during the preparation phase of the assessment process will serve as a convenient summary for future reference. Remember that all programs offering aid, benefits, services, training, or employment must comply with the nondiscrimination regulations.

***Resource 3-4 will help a team collect, preliminary information from programs, activities and services that are a part of a One-Stop Center. Use the lists of program administrators and Access Team liaisons designated on resources 3-2 and 3-3 to assemble a contact or mailing list. Use Resource 3-4 as an interview protocol or as the basis for a letter that is addressed to all of the partnering One-Stop agencies and service providers.***

### Resource 3-1: One-Stop Access Review Start-Up Tasks

***Check off each task in the start-up phase of  
nondiscrimination compliance as it is completed:***

- ☐ Appoint EO Officer
- ☐ Appoint Access Team leader, where appropriate
- ☐ EO Officer and/or Access Team Leader review nondiscrimination statutes and regulations
- ☐ EO Officer and/or Access Team Leader attend nondiscrimination training program
- ☐ Review any existing disability compliance documents and plans
- ☐ Discuss compliance with key staff and community leaders
- ☐ Identify organizations and sources of access team members
- ☐ Recruit and train access team members
- ☐ Draft access assessment plan
- ☐ List programs, organizations, and entities that offer aid, benefits, services, training, or employment through the program of the One-Stop Center
- ☐ Collect or prepare concise descriptions for entities, programs, and services—including policy statements

### Resource 3-2: One-Stop Access Team Members

***Use this tool to identify access team members and contacts:***

Team Member	Organization/ Affiliation	Phone; e-mail	Area of Responsibility

### Resource 3-3: One-Stop Partners, Programs, and Administrators Contact Information for Team Liaisons

***Use this tool to identify One-Stop partners, programs, and administrators:***

Partners and Programs	Administrators	Administrator Phone; e-mail	Access Team Liaison

## Resource 3-4: Request for Program, Activity, or Service Summary

*Please provide a concise description of your program area that includes the following basic information. Summaries should be returned to the Access Team Leader by the following date:*

### **Policies and Procedures**

1. List and provide copies of basic policies and procedures for your program area. These policies and procedures may be in the form of written policies, manuals, policy directives, guidance memoranda, or even unwritten policies.

### **Contracting and Staffing**

2. Indicate what role, if any, contractors play in your program area.
3. Indicate what role, if any, other non-employees play in your program area.
4. Indicate any unique features of your program area's employment policies and requirements.

### **Facilities Used by the Program Area**

5. Please list all facilities your program area uses.

### **Communications**

6. Please indicate briefly how each of the following are used in your program. Of interest is who (in general terms) uses these forms of communication, for what purpose, and approximately how frequently.

- Telephone access
- Libraries or reading rooms
- Automated equipment, including computers
- Audio-visual presentations (television, tapes, etc.)
- Meetings and presentations
- Books and other printed material

7. Please list the normal means by which your program area communicates policies and other key information to staff and to customers.

State Administrative Design .....	Ch. 3 Pg. 1
Governors' Responsibilities .....	Ch. 3 Pg. 1
Methods of Administration .....	Ch. 3 Pg. 1
Equal Opportunity Officers .....	Ch. 3 Pg. 2
A Process for Ensuring Compliance .....	Ch. 3 Pg. 3
Recipient Self-Assessment .....	Ch. 3 Pg. 3
Appointment of the Equal Opportunity Officer .....	Ch. 3 Pg. 4
The Role and Responsibilities of the EO Officer .....	Ch. 3 Pg. 4
Persons Eligible to Serve as an EO Officer .....	Ch. 3 Pg. 5
Four Best Practices for Ensuring Effective Compliance .....	Ch. 3 Pg. 7
BEST PRACTICE ONE: Gain Commitment from Local Workforce Investment Board and One-Stop Administrators .....	Ch. 3 Pg. 7
BEST PRACTICE TWO: Coordinate Compliance Activities .....	Ch. 3 Pg. 7
BEST PRACTICE THREE: Involve People with Disabilities .....	Ch. 3 Pg. 8
BEST PRACTICE FOUR: Institutionalize Compliance Procedures .....	Ch. 3 Pg. 8
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PHASE ONE: Preparation .....	Ch. 3 Pg. 9
Access Team Leader	
PHASE TWO: Evaluating Current Policies, Practice, and Services .....	Ch. 3 Pg. 10
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IMPLEMENTING THE PROJECT START-UP .....	Ch. 3 Pg. 10
Complete Personal Orientation to Nondiscrimination and EO Requirements ....	Ch. 3 Pg. 11
Structure and Initiate the Compliance Process .....	Ch. 3 Pg. 12
team approach	
1. <i>Include representatives from all major organizational units.</i>	
2. <i>Include persons with special skills and expertise.</i>	
3. <i>Include opinion leaders.</i>	
4. <i>Involve people with disabilities.</i>	
Develop an Overview of One-Stop Center Programs .....	Ch. 3 Pg. 15
Resource 3-1: One-Stop Access Review Start-Up Tasks .....	Ch. 3 Pg. 17
Resource 3-2: One-Stop Access Team Members .....	Ch. 3 Pg. 18
Resource 3-3: One-Stop Partners, Programs, and Administrators .....	Ch. 3 Pg. 18
Resource 3-4: Request for Program, Activity, or Service Summary .....	Ch. 3 Pg. 19

## CHAPTER FOUR: General Nondiscrimination Requirements

DRAFT, 7/25/2000

Chapter Four is the first of four chapters that deal with specific areas that require nondiscrimination self-assessment. It begins with a review of the affirmative obligations for which recipients hold full or partial liability. It then presents a process for reviewing the policies, practices, and services of recipients, subrecipients, and service providers to ensure their adherence to nondiscriminatory practices.

### AFFIRMATIVE OBLIGATIONS

As mentioned in the previous chapter, 29 CFR §37 specifies basic nondiscrimination requirements in seven areas, the satisfaction for which must be specified in state Methods of Administration (MOAs). Governors and recipients share liability for these requirements unless the MOAs assign responsibility fully to the recipients. The seven areas represent actions or practices that recipients should employ from the outset of their operation of WIA Title I financially assisted programs. They are first steps that should be put into place immediately and their maintenance helps to ensure that the entities will continue to operate in a nondiscriminatory manner. The seven affirmative obligations are:

- Assurance of nondiscrimination and equal opportunity;
- Appointment of an Equal Opportunity (EO) Officer;
- Nondiscrimination and EO notice and communication
- Data and information collection and maintenance;
- Universal access to programs and activities;
- Governor's administrative oversight responsibilities; and
- Complaint processing procedures [29 CFR §37.54(d)(1)].

The process of appointing an EO Officer and the governor's administrative oversight responsibilities were discussed in the previous chapter. Ensuring the provision of the remaining obligations should be a first priority of the EO Officer and the access assessment team.

### Assurance of Nondiscrimination and Equal Opportunity

Prior even to receiving an award of WIA Title I financial assistance, applicant entities must assure that they will fully

#### 29 CFR §37.20

**What is a grant applicant's obligation to provide a written assurance?**

(a) (1) Each application for financial assistance under Title I of WIA, as defined in Sec. 37.4, must include the following assurance:

comply with the nondiscrimination and equal opportunity provisions of federal Civil Rights laws [29 CFR §37.20(a)(1)]. The regulations provide the following standard language in which this assurance must be given:

### **Required Nondiscrimination and EO Assurance**

As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I--financially assisted program or activity;

Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin;

Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and

Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

The grant applicant also assures that it will comply with 29 CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

Applicants are required to include this assurance in their application materials; though the assurance is considered to be a part of any grant, cooperative agreement, contract, or other arrangement regarding federal financial assistance under Title I of WIA among the Department of Labor, governors, or recipients—whether or not it is physically incorporated into such document. [29 CFR §37.20(a)(2)]. Moreover, each Strategic Five-Year State Plan must provide the same assurance as a condition to its approval [29 CFR §37.20(b)]. The assurance of nondiscriminatory use applies even to property acquired or utilized in relation to WIA Title I financially assisted activities (see the particular requirements regarding assurances, nondiscrimination covenants, and real property acquired or improved through WIA Title I financial assistance at 29 CFR §37.21-22).



## **Nondiscrimination and EO Notice and Communication**

All recipients, regardless of size, must provide initial and continuing notice that they do not discriminate on any of the prohibited grounds [29 CFR §37.29]. This required notification must be provided to program applicants and employment applicants; registrants; eligible applicants and registrants; participants, employees, unions or professional organizations that hold collective bargaining or professional agreements with the recipient, subrecipients that receive WIA Title I funds; and members of the public, including those with impaired vision or hearing. [29 CFR §37.29(a)] Additionally, recipients are required to take appropriate steps to ensure that individuals with disabilities are provided with communications that are as effective as those with individuals without disabilities. [29 CFR §37.29(b).]

At a minimum, the required notice must be posted prominently, in reasonable numbers and places; disseminated in internal memoranda and other written or electronic communications; included in handbooks or manuals; made available to each participant; and made part of each participant's file [29 CFR §37.31(a)]. The notice must also be provided in appropriate formats to individuals with visual impairments. Examples of alternative formats include:

- radio reading services;
- large print (18-point or more);
- audio cassettes;
- bulletin boards;
- Braille; and
- captioning

Where the notice is given an alternate format to a participant with a visual impairment, the participant's file must include a copy of the notice [29 CFR §37.31(b)].

The governor shares responsibility to ensure that service providers within the state meet the notice requirement unless the state's MOA assigns this responsibility to the grant recipient [29 CFR §37.33]. In all cases, the required notices must be provided within 90 days of the date a recipient first becomes subject to these provisions [29 CFR §37.32].

### **29CFR § 37.29**

a) A recipient must provide initial and continuing notice that it does not discriminate on any prohibited ground. This notice must be provided to:

- (1) Registrants, applicants, and eligible applicants/registrants;
- (2) Participants;
- (3) Applicants for employment and employees;
- (4) Unions or professional organizations that hold collective bargaining or professional agreements with the recipient;
- (5) Subrecipients that receive WIA Title I funds from the recipient; and
- (6) Members of the public, including those with impaired vision or hearing.

(b) As provided in Sec. 37.9, the recipient must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others.

Moreover, the regulations prescribe the exact language in which the nondiscrimination notice must be given [29 CFR §37.30]. A sample nondiscrimination notice appears below:

**Equal Opportunity Is the Law**

It is against the law for this recipient of Federal financial assistance to follow these bases:

Against any individual in the United States, on the basis of race, color, origin, age, disability, political affiliation or belief; and

Against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

Deciding who will be admitted, or have access, to any WIA Title I-financially assisted program or activity;

Providing opportunities in, or treating any person with regard to, such a program or activity; or

Making employment decisions in the administration of, or in connection with, such a program or activity.

**What to Do If You Believe You Have Experienced Discrimination**

If you think that you have been subjected to discrimination under a WIA Title I-financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either:

The recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or

The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you do not have to wait for the recipient to issue that Notice before filing a complaint with CRC. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

Many organizations use graphic symbols such as those that appear at the side on the following page in notices and advertisements to call attention to the nature of the message. It is ultimately the responsibility of the recipient to determine the most effective methods for making individuals aware of their rights and protections, a responsibility that is typically assigned to the EO Officer.

**Additional Notice and Communication Requirements**

***Publications.*** Recruitment brochures and other materials that describe WIA Title I financially assisted programs and requirements for participation; and that are ordinarily distributed or communicated in electronic or paper form, by written or oral means must state that the WIA Title-I financially assisted program of the recipient is “an equal opportunity employer/program” and that “auxiliary aids and services are available upon request to individuals with disabilities.” This requirement holds for materials and communication to staff, clients, or the public at large [29 CFR §37.34(a)]. Where the materials indicate a telephone number for contacting the recipient, the materials must state the telephone number of the TDD/TYY or relay service used by the recipient [29 CFR §§37.9(c) and 37.34(a)].



***Broadcast Information.*** When Recipients publish or broadcast program information in the news media, they must ensure that such publications and broadcasts state that the WIA Title I-financially assisted program or activity in question is an equal opportunity employer/program and indicate that auxiliary aids and services are available upon request to individuals with disabilities [29 CFR §37.34(b)]. Alternative wording is acceptable, so long as the message indicates that discrimination in the WIA Title I financially assisted activity or program is prohibited by federal law.



***Unequal Treatment.*** In addition, recipients are **not** permitted to communicate by any means that they treat beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited ground specified in §37.5 (see Chapter Two for the listing of prohibited grounds for discrimination), except as such treatment is otherwise permitted under federal law or 29 CFR §37.

***Orientation.*** Whenever a recipient conducts an orientation to its program for new participants, new employees, or the general public, it is also required to include a discussion of rights under the WIA nondiscrimination and equal opportunity provisions, including the right to file a complaint of discrimination with the recipient or the Director of the Civil Rights Center [29 CFR §37.36].

## **Data and information collection and maintenance**

**Recording requirement.** Keeping track of recipients' compliance with the nondiscrimination and EO provisions of WIA is a critical monitoring function of the CRC. The 29 CFR §37 regulations require recipients to collect data and maintain records that will enable the CRC or the governor to conduct quantitative data analyses to verify compliance [29 CFR §37(b)(1)].

At a minimum, the data that is maintained must include records on:

- applicants
- registrants
- eligible applicants or registrants
- participants
- terminees
- employees
- applicants for employment

Each record that a recipient maintains on an individual from any of the specified groups must include the following data points:

- race/ethnicity
- sex
- age
- disability status, where known

This data collection is to be in addition to other program data collection requirements. However, if these data can be obtained by the CRC through other reporting requirements or sources known to the CRC Director, the recipient is not required to resubmit them [29 CFR §37(a)]. This is in keeping with one of the principles of the WIA, which seeks to consolidate record keeping and reporting.

The information that is maintained must be stored in a manner that ensures confidentiality, and can only be used for the specified purposes of:

- record keeping and reporting;
- determining eligibility, where appropriate, for WIA Title I-financially assisted programs or activities; and
- determining the extent to which the recipient is operating its program or activity in compliance with the law [29 CFR §37.37(b)(2)].

**Complaint log.** In addition, recipients must maintain a log of complaints filed with them that allege discrimination on the basis of race, color, religion, sex, national origin, age,

#### **29CFR § 37.37**

##### **What are a recipient's responsibilities to collect and maintain data and other information?**

(b)(2) Such records must include, but are not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. Each recipient must record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, eligible applicant/registrator, participant, terminee, applicant for employment, and employee. Such information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of recordkeeping and reporting; determining eligibility, where appropriate, for WIA Title I-financially assisted programs or activities; determining the extent to which the recipient is operating its WIA Title I-financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law.

#### **29CFR § 37.37**

##### **What are a recipient's responsibilities to collect and maintain data and other information?**

(c) Each recipient must maintain, and submit to CRC upon request, a log of complaints filed with it that allege discrimination on the ground(s) of race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship, and/or participation in a WIA Title I-financially assisted program or activity. The log must include: the name and address of the complainant; the ground of the complaint; a description of the complaint; the date the complaint was filed; the disposition and date of disposition of the complaint; and other pertinent information. Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential.

disability, political affiliation or belief, citizenship, and or/participation in a WIA Title I financially assisted program or activity [29 CFR §37.37(c)]. The log, which must be submitted to the CRC upon request, must include for each complaint:

- name and address of complainant
- ground of the complaint
- description of the complaint
- date the complaint was filed
- disposition and date of disposition of the complaint
- other pertinent information

However, information that could lead to the identification of a particular individual as having filed a complaint must be kept confidential [29 CFR §37.37(c)].

Responsibility for collecting and maintaining these records and information at the service provider level within a One-Stop system may be assumed by the governor or the LWIA grant recipient, depending upon the state's MOA [29 CFR §37.37 (e)].

***Period of retention of records.*** Each recipient must maintain all of the nondiscrimination and EO records, along with the log of complaints for a period of three years following the close of each program year [29 CFR §37.39].

***Required access by CRC Director.*** Grant applicants and recipients must permit access by the CRC Director to their premises, employees, and participants during the course of the recipient's normal business hours. Such access may be for the purposes of monitoring activities associated with a state's MOA, nondiscrimination and EO compliance reviews, or investigating a complaint of nondiscrimination. The CRC Director shall have access to records, books, accounts, or other materials that may pertain to a complaint investigation or to ensuring compliance with nondiscrimination and EO provisions. Assertions of privacy or confidentiality are not a basis for a recipient's withholding information from the CRC and will not bar CRC from evaluating or seeking to enforce compliance with nondiscrimination and EO provisions [29 CFR §37.40]. In the event that information requested by the CRC is in the exclusive possession of another agency, the grant applicant or recipient must certify to CRC that it has made efforts to obtain the information, and that the agency, institution or person has failed or refused to provide it [29 CFR §37.40 (c)].

**Required notification of lawsuits or enforcement.** In addition to collecting and maintaining the information described, and submitting data and reports to the CRC, as requested, recipients must also provide prompt notification to the Director of the CRC in the event that any administrative enforcement action or lawsuit is filed against the recipient alleging discrimination on any of the prohibited grounds. This notification must include:

- names of the parties to the action or lawsuit
- forum in which each case was filed
- relevant case numbers [29 CFR §37.38].

Similar information must be provided during compliance reviews or complaint investigations. Whenever an applicant or recipient is seeking a renewal of WIA Title I financial assistance, the applicant or recipient must furnish the same record of lawsuits or enforcement actions filed against the recipient or applicant during the previous two years [29 CFR §37.38].

**Confidentiality requirement.** Finally, whenever persons provide information that relates to or assists in a compliance review or investigation—including persons who file complaints-- their identity must be kept confidential to the extent that this is possible, consistent with a fair determination of all of the issues involved. In the event that such a person's identity must be disclosed, they must be protected from retaliation. This responsibility to maintain confidentiality extends to grant applicants, recipients, and the U.S. Department of Labor [29 CFR §37.41].

### Universal access to programs and activities

Recipients must ensure universal access to the aid, benefit, services, training, or employment opportunities that they offer under WIA Title I financially assisted programs and activities. Recipients should take proactive steps to reach out to all eligible populations and to use a variety of means to enhance community awareness of their programs and activities. Strategies that are suggested included:

- advertising a recipient's programs in a variety of media and to various segments of the market;
- sending notices of programs, activities, or openings to schools or community service groups that serve a variety of populations; and

#### 29CFR § 37.41

**What responsibilities do grant applicants, recipients, and the Department have to maintain the confidentiality of the information collected?**  
 Recipients must take appropriate steps to ensure that they are providing universal access to their WIA Title I financially assisted programs and activities. Recipients should make reasonable efforts to include members of both sexes, various racial and ethnic groups, and individuals with disabilities and individuals of differing age groups. Such efforts may include, but are not limited to:

- (a) Advertising the recipient's programs and/or activities in media, such as newspapers or radio programs, that specifically target various populations;
- (b) Sending notices about openings in the recipient's programs and/or activities to schools or community service groups that serve various populations; and
- (c) Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.

- consulting with community service groups to develop improved outreach and service to diverse populations [29CFR §37.42].

It is useful to note that the use of the term “universal access” in the context of the Section 188 regulations differs somewhat from the way that term is used within the disability community. In the disability community the term is often used synonymously with “universal design,” the concept whereby environments, products, and systems are created to be usable by people with the widest range of abilities. It is useful to keep this distinction in mind when interacting with the members of the disability community. They will speak of “universal access” to environments and equipment, where the workforce investment community will speak of universal access to programs, activities, and opportunities.

### **Complaint processing procedures**

The final affirmative obligation for recipients is the adoption and publication of procedures for responding to complaints of discrimination that may be filed with them. Each recipient’s procedures must provide that a written Notice of Final Action on discrimination complaints will be issued within 90 days of the date any complaint is filed; this must be specified in the recipient’s published procedures [29 CFR §37.76(a)]. Beyond this assurance, a recipient’s complaint processing procedures must provide for at least the following:

- An initial, written notice to the complainant that includes (1) an acknowledgment that the recipient has received the complaint, and (2) notice that the complainant has the right to be represented in the complaint process;
- A written statement of the issue(s), provided to the complainant, that includes (1) a list of the issues raised in the complaint, and (2) for each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection;
- A period for fact-finding or investigation of the circumstances underlying the complaint;
- A period during which the recipient attempts to resolve the complaint. Alternative dispute resolution (ADR) must be included among the methods made available to resolve the complaint;
- A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that includes: (1) for each issue raised



in the complaint, a statement of either the recipient's decision on the issue and an explanation of the reasons underlying the decision, or a description of the way the parties resolved the issue; and (2) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the recipient's final action on the complaint [29 CFR §37.76].

As indicated above, a recipients procedures must include the option of alternative dispute resolution (ADR). The choice to elect this option rests with the complainant [20 CFR §37.76 (c)(1)].

## **IMPLEMENTING THE REVIEW OF NONDISCRIMINATORY POLICIES AND PRACTICES**

Local Workforce Investment Areas are required to review both written policies and actual operating procedures to ensure that people with disabilities are not subjected to discrimination. One-Stop Centers can use a self-evaluation checklist process to organize and review their written and unwritten policies for compliance with nondiscrimination regulations. Findings can then be analyzed to identify where changes are needed to permit people with disabilities to participate fully in the total range of programs, activities, and services offered by the Workforce Investment System and to enjoy their full benefits. LWIAs and other recipients will need to evaluate policies and procedures that affect individuals with disabilities separately from the general policies and practices pertinent to other audiences.

***Resource 4-1, the Recipient Self-Assessment Survey presented in this chapter, may be used by a One-Stop Center to evaluate its nondiscrimination policies and practices, except in the area of employment, which is addressed in the next chapter.***

***Resource 4-2, the Affirmative Obligations Survey presented in this chapter, may be used by a One-Stop Center to evaluate its provision of the seven areas of basic nondiscrimination requirements.***

A three step process will enable access teams to complete the review of policies, practices, and affirmative obligations on the part of recipients, partners, and service providers in a One-Stop system.

### Step 1. Preparing for the Review

- Gather the Access Team as described in chapter 3;
- Review the lists of partners and programs gathered with Resource 3-3 and the documents received by entities in response to Resource 3-4;
- Clarify the survey and review process;
- Make assignments.

### Step 2. Conduct the Review

- Use Resource 4-1 to assess compliance with basic nondiscrimination and EO provisions of 29 CFR §37;
- Use Resource 4-2 to assess required affirmative obligations.

### Step 3. Analyze Findings

- Document the changes needed;
- Communicate with partners, subrecipients, or service providers as appropriate;
- Obtain comments and other feedback;
- Preserve reports and other documents from the process.

## Step 1: Preparing for the Review

***Gather the Access Team as described in chapter 3.*** The previous chapter outlined a process for forming an access team composed of representatives from the organizations and agencies that partner under a One-Stop system, along with representatives from the disabilities community. That team, headed by the recipient's EO Officer or a separate Access Team Leader should conduct the review of policies, practices, and compliance with affirmative obligations.

***Review the lists of partners and programs gathered with Resource 3-3 and the documents received by entities in response to Resource 3-4.*** Section 188 emphasizes that **all** aid, benefits, services, training, and employment must be provided or made available without discrimination against persons with disabilities. In completing the review of programs and activities that are conducted in conjunction with a One-Stop Center or system, it is important to review all of the programs and activities. Any aid, benefit, service, training, or employment opportunity must be reviewed for compliance.

Users of this guide that compiled complete listings of One-Stop programs and activities with Resource 3-3 in the previous chapter will already have the list of those whom they must survey. If this process has not already been completed,

it becomes the first step now. In addition, Resource 3-4 provided a means for soliciting mission and policy statements from the collection of entities that offer aid, benefits, services, training, or employment opportunities under a One-Stop system. Documents that were received in response to Resource 3-4 will be an important source of information to access teams completing their self-assessment.

***Clarify the survey and review process.*** Resources 4-1 and 4-2 are provided in the pages that follow to assist access teams in checking compliance with all of the nondiscriminatory provisions of the Section 188 regulations and also ensuring the provision of required affirmative obligations on the part of each recipient.

The review process begins with examining the data provided by each entity and proceeding through the questions on the two survey resources. Access team members should become familiar with the entities that will be the focus of their assessment, along with their written material. After the review of submitted material, the access team member(s) assigned to individual entities should schedule a session with the entity's EO Officer, Director, or other individual who will be knowledgeable of the entity's policies and practices. With this representative of the entity, the access team members should work step by step to complete the two assessment surveys.

***Make assignments.*** The survey and review process will vary according to the size of the recipient, the number of subrecipients, programs, and activities that are assembled in any group of partners. If the access team includes representatives from all of the entities in a One-Stop system, team members may become the primary point of contact to their own organization. In many cases, team members will be required to participate in the review of several participating entities. A practice that has proven helpful in other assessment processes is to assign team members in pairs. It is often easier to complete reports based on the memory and record of two persons who have spoken with representatives of the various entities.

Make certain to assign all recipients, entities, and sub-recipients to some member or members of the access team. Specify a schedule of dates for the completion of data gathering, contacts, and final reports.

## **Step 2. Conduct the Review**

**Use Resource 4-1 to assess compliance with basic nondiscrimination and EO provisions of 29 CFR §37.** With a representative from the entity under review, work through the items of this resource. The resource includes all of the individual cases and conditions where a recipient must make certain not to discriminate. Many of the questions ask the recipient to conduct a mental survey of all of their programs. Be certain, for example, to consider all of the training programs that an individual entity might offer or all of the locations that might be utilized – even if only in a small part – in the conduct of an operation or activity. Be sure to make detailed notes or description of any situations that are found to be out of compliance.

**Use Resource 4-2 to assess required affirmative obligations.** This second resource assesses the compliance with a recipient's affirmative obligations that were described in the first part of the present chapter. This resource is presented in the form of a checklist. A suggestion is to provide a copy to the entity's representative in advance of the meeting with the member(s) of the access team.

### **Step 3. Analyze Findings**

**Document the changes needed.** Once team members have completed their reviews of all of the constituent entities in the One-Stop system, the team should report their findings to one another. In particular situations where any noncompliance was discovered should be presented to the entire team and recommendations for change should be prepared.

**Communicate with partners, subrecipients, or service providers as appropriate.** Each entity that participated in the survey and assessment process should receive a formal notice when the process has been completed and a confirmation that all of their programs, policies, and affirmations were found to be in compliance; or, a description of those situations that were found not to be in compliance and the access team's recommendations for change.

**Obtain comments and other feedback.** In situations where an aid, benefit, service, training, or employment opportunity is found to include some form of discrimination or where one or more of the required affirmations are found to be insufficient, access teams should take every effort to make certain that the recipient involved understands the area(s) where they have not fully complied. Given the composition of the access team,

its members may be excellent resources to assist recipients with action plans for making the necessary changes to come into full compliance.

In particular, newer recipients may benefit from the experience and counsel of access team members. It should be remembered that the access team is conducting a self-assessment for the benefit of the recipient; it is not a monitoring entity with any type of enforcement or reporting requirements. It may be a less threatening “friend” to assist newer entities with understanding and complying with nondiscrimination requirements. Offering assistance may be a means of gaining a new ally in preserving the rights and opportunities of persons with disabilities.

More experienced recipients and operators should be familiar with all of the obligations that were confirmed in the review process, since they are similar to obligations under other federal grant programs and follow closely the requirements under JTPA, which preceded the WIA. If more experienced recipients are found to be out of compliance, they should be notified of the area(s) where illegal discrimination is occurring and encouraged to swiftly return their program or operation to compliance.

***Preserve reports and other documents from the process.***

When the entire assessment process is completed, survey findings returned to entities that were included, and feedback received, the access team should ensure that its records are assembled and stored in a secure fashion so that they may assist the recipient to responding to inquiries from the CRC or to respond in the event that a complaint of discrimination is filed against the recipient. It should be the responsibility of the Access Team Leader to make certain that these records are collected and preserved.

## Resource 4-1: Recipient Self-Assessment Survey

### Review of Policies and Practices that Govern Programs, Activities, and Services of WIA Title I Recipients

#### I. Basic Nondiscrimination and EO Requirements

The survey that follows leads a recipient to examine each of the areas that must remain free of discrimination against persons with disabilities. Chapter Two previously described the specific types of discrimination that are prohibited under the WIA Section 188, along with the requirement to make reasonable modifications to accommodate the requests of persons with disabilities – so long as the requested accommodations do not cause an undue hardship to the recipient. The areas that are reviewed in this survey and the particular requirements of nondiscrimination are enumerated at 29 CFR §37.7. Access teams using this survey will benefit from a review of Chapter Two and having a copy of §37.7 at hand.

##### **A. Denial of Opportunity to Participate or Benefit.**

29CFR § 37.7 (a)(1)

People with disabilities who are otherwise qualified to participate in the programs, activities, and services of a One-Stop Center cannot be barred from participation. One-Stops are prohibited from excluding not only people with disabilities, but also friends or family members associated with them.

1. Identify any circumstances in which a person with a disability or anyone associated with the person would, because of the person's disability, be restricted from or denied participation in a program, activity, service, or benefit offered by one of the entities of the One-Stop.
2. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

##### **B. Provision of Unequal Opportunity to Benefit**

29CFR § 37.7 (a)(2)

**Prohibited.** Section 188 requires that people with disabilities receive the same opportunity as people without disabilities to participate in and benefit from the programs, activities, and services of a One-Stop or LWIA.

1. Identify any circumstances in which there is greater opportunity for people without disabilities than for a person

#### Resource 4-1: Recipient Self-Assessment Survey

with a disability to participate in a program, activity, service, or benefit that is generally available to both.

2. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**C. Provision of Benefit or Service that is Not Equally Effective Prohibited.** In providing general services and benefits, a Title I recipient must ensure that services provided to qualified individuals with disabilities are effective enough to afford them equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as individuals without disabilities.

29CFR § 37.7 (a)(3)

1. Describe procedures used to ensure that each One-Stop entity provides its general services and benefits to qualified individuals with disabilities in a manner that is effective enough to afford them an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as individuals without disabilities.

2. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**D. Provision of Separate or Different Benefits Prohibited.** A One-Stop Center may not provide separate or different programs, services, or benefits for individuals with disabilities, unless necessary to provide them with equally effective participation as afforded to nondisabled persons. Even when separate or different programs are permitted, the local workforce investment system must consider the following requirements:

29CFR §§ 37.7 (a)(4); (c); (d)

- First, each qualified person with a disability must be given the same opportunity as nondisabled persons to participate in the regular offerings of the One-Stop entities.
- Second, each qualified person with a disability must be given the opportunity to participate in and benefit from the offerings of the One-Stop in the most integrated setting appropriate to the needs of that individual.

#### Resource 4-1: Recipient Self-Assessment Survey

- Third, the provision of separate or different services is permitted only when necessary to provide an equal opportunity to qualified persons with disabilities.
  1. Identify any separate program, activity, service, or benefit offered by the entities of the One-Stop that contributes to affording people with disabilities an equal opportunity.
  2. Describe any circumstances in which a person with a disability would be prohibited from participating in regular (non-separate) activities because of the provision of separate activities.
  3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**E. Surcharges Prohibited.** A One-Stop system is required to make its programs, activities, services, and benefits available to qualified individuals with disabilities to the extent that they are available to other participants in the program. Surcharges may not be imposed on individuals with disabilities to cover the cost of measures necessary to provide nondiscriminatory treatment.

29CFR § 37.7 (k)

1. List each program, activity, service, or benefit for which any One-Stop entity charges a fee.
2. Identify any circumstances in which a person with a disability would be asked to pay a fee or meet any other requirements not imposed on other program participants.
- 3 . Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**F. Exclusion from Membership of Planning or Advisory Boards Prohibited.** Participation in programs and activities extends also to board membership and participation. One-Stop systems have an array of boards, ranging from the LWIB to planning groups and committees for activities and programs of the various entities that partner or participate in the provision of aid, benefits, services, training, or employment under WIA Title I financial assistance. All of these must be

29CFR § 37.7 (a)(5)



#### Resource 4-1: Recipient Self-Assessment Survey

open to membership and participation by persons with disabilities.

1. Describe procedures used to ensure that each One-Stop entity, in its ongoing or periodic establishment of planning or advisory boards, affords qualified individuals with disabilities the opportunities of membership and participation.
2. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**G. Limitation of the enjoyment of any right, privilege, advantage, or opportunity prohibited.** Persons with disabilities are to be afforded the same degree of enjoyment of advantages and opportunities, rights and privileges that others in the public may enjoy through the aid, benefits, services, or training that are offered through a One-Stop Center.

29CFR § 37.7 (a)(6)

1. Identify any rights, privileges, advantages, or opportunities that may be enjoyed through participation in the aid, benefits, services, or training that are offered to the public by a One-Stop entity.
2. Describe any circumstances in which a person with a disability would be limited from enjoying the full benefit that others receive from the aid, benefits, services, or training.
3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**H. Reasonable Modifications in Policies, Practices, and Procedures.** One-Stop Centers are required to review their policies, practices, and procedures to determine the effect of each one on participation by individuals with disabilities. If a One-Stop identifies any policy, practice, or procedure that has a discriminatory effect on individuals with disabilities, the Center is required to modify it unless the modification would

29CFR § 37.8

#### Resource 4-1: Recipient Self-Assessment Survey

result in a fundamental alteration of the nature of the program, service, or activity.

1. Describe the procedures used to inform the public that the program is prepared to make reasonable modifications to accommodate any qualified individual with a disability and to respond to requests for modifications.
2. Identify procedures used to inform appropriate One-Stop personnel of the need to make reasonable and effective modifications to provide otherwise qualified individuals with disabilities equal opportunity to participate in the programs, services, and activities operated by the One-Stop entities.
3. Identify the procedure used by the One-Stop or constituent entity to determine whether a policy or practice modification would fundamentally alter the nature of the program. If any, please describe.
4. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**I. Eligibility Criteria.** A Title I recipient may not use eligibility criteria for participation in its programs or receipt of its benefits and services that screen out or deny individuals with disabilities full and equal participation in programs, services or benefits, unless the eligibility criteria are necessary for and relevant to the aid, benefit, service, or training being offered.

29CFR § 37.7 (i)

1. List the aid, benefits, services, and training offered by the One-Stop entities and the *essential* eligibility requirements of each.
2. Identify any criteria that may limit or screen out individuals with disabilities from participation in the programs, activities, services, and benefits offered by the One-Stop entities. Provide details.
3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

#### Resource 4-1: Recipient Self-Assessment Survey

**J. Criteria or Methods of Administration.** One-Stop Centers may not maintain policies or actual practices that exclude qualified individuals with disabilities on the basis of their disabilities.

29CFR § 37.7 (e)

1. List each aid, benefit, service, or training offered by the One-Stop and identify relevant criteria or methods of administration.
2. Determine whether adherence to any standard, procedure, criterion, or method of administration excludes or segregates individuals with disabilities on the basis of their disability from full participation in each aid, benefit, service, or training offered by the One-Stop. Provide details..
3. Determine whether adherence to any standard, procedure, criterion, or method of administration perpetuates discrimination against any individual with a disability by another public entity that is under common administrative control or is in the same state as the One-Stop Center. If any, please explain.
4. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**K. Selecting Sites and Locations.** Title I recipients may not select sites or locations for facilities that have the effect of excluding or denying individuals with disabilities the benefits of or participation in the aid, benefits, services, or training opportunities of the Workforce Development System, or otherwise subjecting qualified individuals with disabilities to discrimination.

29CFR § 37.7 (f)

1. Determine whether the terrain or any other feature of a site or location under consideration would have any adverse effect on participation by a qualified individual with a disability.
2. Describe criteria utilized in the selection of sites or locations for facilities that are designed to ensure that qualified individuals with disabilities are not subjected to discrimination. Are these criteria utilized every time sites or locations are being selected for facilities? Provide details.

#### Resource 4-1: Recipient Self-Assessment Survey

3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**L. Significant Assistance.** One-Stop entities that provide significant assistance to another agency, organization, or individual retain responsibility for ensuring that the other entity or individual does not discriminate on the basis of disability. In determining whether assistance to another entity or individual is significant, a One-Stop should consider the substantiality of the relationship (e.g., financial support) and whether the activities of the other entity or individual relate so closely to the One-Stop's programs that these activities could fairly be considered activities of the One-Stop Center.

29CFR § 37.7 (b)

1. List any organization, program, or individual that receives significant assistance from the Local Workforce Investment Area or One-Stop Center.
2. Describe the policies, procedures, and practices used by the Workforce Investment System to ensure that agencies, organizations, and individuals that receive significant assistance do not discriminate against individuals with disabilities.
3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**M. Procurement Contracts.** One-Stop Centers may not discriminate on the basis of disability in selecting procurement contractors.

29CFR § 37.7 (g)

1. List any organizations, programs, or individuals with which the One-Stop contracts services.
2. Identify the policies and actual operating practices that govern contract relations to determine whether provisions are included to ensure that programs, activities, services, and benefits provided by contractors on behalf of the One-Stop Center are free of discrimination. If none, please explain.

#### Resource 4-1: Recipient Self-Assessment Survey

3. List any circumstances in which a consideration related to disability would influence the choice of a procurement contractor. Please explain.
4. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

**N. Licenses or Certification.** A One-Stop Center may not deny a license or certification to any person with a disability who meets the essential eligibility requirements for the license or certification. Eligibility requirements cannot include criteria that directly or indirectly screen out people with disabilities unless the criteria are necessary to the performance of the activity which is the object of the license or certificate.

29CFR § 37.7 (h)

1. List any licenses or certifications issued by the One-Stop Center or any of its constituent entities.
2. List any eligibility criteria for licenses and certificates that may tend to screen out people with disabilities. For each potentially exclusionary criterion, identify why the criterion is necessary to the performance of the activity to which the license or certificate applies.
3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

## Resource 4-2: Recipient Affirmative Obligation Survey

### Review of Affirmative Obligations of WIA Title I Recipients

#### 2. Affirmative Obligations

The checklist that follows leads a recipient to examine each of the required areas of affirmative obligation specified in WIA Section 188. The obligations were mentioned in Chapter Three and explained at the beginning of the present chapter. These are the obligations for which governors and recipients may share liability and which must be specified in state Methods of Administration. Entities completing the checklist will learn if they are complying with all of the affirmative obligations required to ensure access of people with disabilities to Title I financially assisted programs.

##### 1. Assurance of nondiscrimination and equal opportunity

- |   |                     |
|---|---------------------|
| <input type="checkbox"/> Applications, grants, cooperative agreements, contracts, or similar documents specify the recipient's assurance of nondiscrimination, using the language reprinted from 29 CFR §37.20 (a)(1) at the beginning of the present chapter.            | 29CFR §37.20 (a)(1) |
| <input type="checkbox"/> Instruments that effect or record the transfer of real property, structures, or improvements on real property or structures used in conjunction with WIA Title I activities include a covenant assuring nondiscrimination and equal opportunity. | 29CFR §37.22        |

##### 2. Appointment of an Equal Opportunity (EO) Officer

- |   |              |
|---|--------------|
| <input type="checkbox"/> Recipient, larger than a "small recipient" has appointed an EO Officer.  | 29CFR §37.23 |
| <input type="checkbox"/> Small recipient has designated and charged an individual to develop and publish complaint procedures and process complaints alleging discrimination against persons with disabilities. | 29CFR §37.27 |
| <input type="checkbox"/> EO Officer is a senior-level employee.   | 29CFR §37.24 |
| <input type="checkbox"/> EO Officer does not have other responsibilities that are or appear to be in conflict with responsibilities of an EO Officer.   | 29CFR §37.24 |

#### Resource 4-2: Recipient Affirmative Obligation Survey

<input type="checkbox"/> EO Officer serves as liaison with CRC.	29CFR §37.25 (a)
<input type="checkbox"/> EO Officer is charged with monitoring recipient's activities and reviewing recipient's written policies to ensure nondiscrimination.	29CFR §§37.25 (b); (c)
<input type="checkbox"/> EO Officer has developed and published recipient's procedures for processing discrimination complaints.	29CFR §37.25 (d)
<input type="checkbox"/> EO Officer reports directly to agency director regarding equal opportunity matters.	29CFR §37.25 (e)
<input type="checkbox"/> EO Officer has received sufficient training to exercise the position.	29CFR §37.25 (f)
<input type="checkbox"/> Notice of the EO Officer's name and contact information are readily available to the public.	29CFR §37.26 (a)
<input type="checkbox"/> Notice of the EO Officer's name and contact information appear on internal and external communications about the recipient's nondiscrimination and EO programs.	29CFR §37.26 (b)
<input type="checkbox"/> EO Officer has sufficient staff and resources.	29CFR §37.26 (c)
<input type="checkbox"/> EO Officer has explicit support of top management.	29CFR §37.26 (c)
<input type="checkbox"/> EO staff have received sufficient training to maintain competency.	29CFR §37.26 (d)

### 3. Nondiscrimination and EO notice and communication

<input type="checkbox"/> Initial and continuing nondiscrimination and EO notice is provided to all registrants, applicants, eligible applicants/registrants; participants; applicants for employment and employees; unions or professional organizations that hold collective bargaining or professional agreements with the recipient; subrecipients, and to members of the public using the wording of 29 CFR §37.30 that is reprinted earlier in the present chapter.	29CFR §§37.29 (a) (1-5)
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#### Resource 4-2: Recipient Affirmative Obligation Survey

- |   |                     |
|---|---------------------|
| <input type="checkbox"/> Initial and continuing notice of EO and nondiscrimination is provided to those with impaired vision or hearing.  | 29CFR §37.29 (a)(6) |
| <input type="checkbox"/> Recipient ensures that communications with individuals with disabilities are as effective as communication with others.  | 29CFR §37.26 (b)    |
| <input type="checkbox"/> EO and nondiscrimination notice is posted prominently in reasonable numbers and places.  | 29CFR §37.31 (a)(1) |
| <input type="checkbox"/> EO and nondiscrimination notice is disseminated in internal memoranda and other written and electronic communications.   | 29CFR §37.31 (a)(2) |
| <input type="checkbox"/> EO and nondiscrimination notice is included in handbooks and manuals.  | 29CFR §37.31 (a)(3) |
| <input type="checkbox"/> EO and nondiscrimination notice is made available to each participant and included in his/her file.  | 29CFR §37.31 (a)(4) |
| <input type="checkbox"/> EO and nondiscrimination notice is provided in appropriate alternate formats to persons with visual impairments and record of such provision is recorded in participants' files.   | 29CFR §37.31 (b)    |
| <input type="checkbox"/> Recruitment brochures and other materials that describe a recipient's programs to the public indicate that the WIA Title I-financially assisted program or activity is an "equal opportunity employer/program" and that "auxiliary aids and services are available upon request to individuals with disabilities." | 29CFR §37.34 (a)    |
| <input type="checkbox"/> Materials that are made available to the public that include a recipient's telephone number also include the telephone number of the TDD/TTY or relay service used by the recipient.   | 29CFR §37.34 (a)    |
| <input type="checkbox"/> Recipient's program information that is published or broadcast in the news media include the notice that any Title I financially assisted program is an "equal opportunity employer/program" and that "auxiliary aids and  | 29CFR §37.34 (b)    |



#### Resource 4-2: Recipient Affirmative Obligation Survey

services are available upon request to individuals with disabilities.”

- ☐ Recipient employs no communications in any form or media that suggest that the recipient treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited ground, except where legally permissible.

29CFR §37.34 (c)

- ☐ Each orientation presentation for new participants, new employees, or the general public includes a discussion of rights under the nondiscrimination and EO provisions of WIA, including the right to file a complaint with the recipient or the CRC.

29CFR §37.36

#### 4. Data and information collection and maintenance

Recipient maintains nondiscrimination and EO records that include race/ethnicity, sex, age, and disability status, where known, for:

29CFR §37.37 (b)(2)

- ☐ applicants
- ☐ registrants
- ☐ eligible applicants or registrants
- ☐ participants
- ☐ terminees
- ☐ employees
- ☐ applicants for employment

- ☐ The system and format in which the records are kept allows the governor or CRC to conduct quantitative data analyses from the data.

29CFR §37.37 (b)(1)

#### Resource 4-2: Recipient Affirmative Obligation Survey

- |  |                     |
|--|---------------------|
| <input type="checkbox"/> Recipient maintains adequate procedures to guard the confidentiality of all data and information pertaining to EO and nondiscrimination.  | 29CFR §37.37 (b)(2) |
| <input type="checkbox"/> Recipient maintains adequate procedures to guard the confidentiality of all data and information that relates to compliance reviews or investigation of a complaint, including the identity of any person who files a complaint of discrimination.  | 29CFR §37.41        |
| <input type="checkbox"/> Recipient maintains a log of complaints filed with them that allege EO or disability discrimination; the log includes: name and address of complainant; ground of the complaint; description of the complaint; date the complaint was filed; disposition and date of disposition of the complaint; other pertinent information. | 29CFR §37.37 (c)    |
| <input type="checkbox"/> Recipient retains EO and nondiscrimination records for at least three years following the close of each program year.   | 29CFR §37.39        |
| <input type="checkbox"/> Recipient grants access upon request of the CRC Director for monitoring or complaint investigation.   | 29CFR §37.40        |
| <input type="checkbox"/> Recipient has provided prompt notification to CRC of any lawsuits or enforcement actions filed against the recipient, including: the names of parties to the action or lawsuit, the forum in which each case was filed, and relevant case numbers.  | 29CFR §37.38 (a)    |

#### 5. Universal access to programs and activities

- |   |              |
|---|--------------|
| <input type="checkbox"/> Recipient has taken appropriate steps to ensure provision of universal access to their programs and activities.  | 29CFR §37.42 |
| <input type="checkbox"/> Steps have incorporated reasonable efforts to include members of both sexes, various racial and ethnic groups, individuals with disabilities, and individuals from differing age groups. | 29CFR §37.42 |

#### Resource 4-2: Recipient Affirmative Obligation Survey

- |   |                  |
|---|------------------|
| <input type="checkbox"/> Recipients that use advertisements, have placed advertisements in various newspapers or radio programs that target diverse segments of the population. | 29CFR §37.42 (a) |
| <input type="checkbox"/> Recipients that send notices to schools or community service groups have included those schools and groups that serve a variety of populations.        | 29CFR §37.42 (b) |
| <input type="checkbox"/> Recipients have consulted with appropriate community service groups regarding ways to improve recipient's outreach and service to various populations. | 29CFR §37.42 (c) |

#### 6. Governor's administrative oversight responsibilities

- |   |              |
|---|--------------|
| <input type="checkbox"/> Where applicable, recipient understands and is fulfilling its obligations and liabilities as assigned under the state's Methods of Administration. | 29CFR §37.52 |
|---|--------------|

#### 7. Complaint processing procedures

- |  |                             |
|--|-----------------------------|
| <input type="checkbox"/> Recipient has adopted and published procedures for responding to complaints of discrimination that may be filed with them in accord with 29 CFR §§37.70-76.                   | 29CFR §37.52                |
| <input type="checkbox"/> Recipient's procedures provide assurance that a written Notice of Final Action on discrimination complaints will be issued within 90 days of the date any complaint is filed. | 29CFR §37.76 (a)            |
| <input type="checkbox"/> Recipient's procedures for responding to complaints of discrimination include the option of alternative dispute resolution (ADR), that may be elected by any complainant.     | 29CFR §37.76 (c)            |
| <input type="checkbox"/> Recipient's procedures for responding to complaints include notifying complainant that they have the right to be represented by an attorney or other individual.              | 29CFR §§37.76; 76 (b)(1)(i) |
| <input type="checkbox"/> Recipient's EO Officer has copies of CRC's Complaint Information and Privacy Act Consent Form in his/her file.  | 29CFR §37.74                |

## CHAPTER FOUR: General Nondiscrimination Requirements

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## CHAPTER FIVE: Employment Policies and Practices

DRAFT, 7/25/2000

This chapter reviews nondiscrimination requirements related to the employment policies and practices of One-Stop entities. It presents an overview of the legal standards and their basic requirements of nondiscrimination in the hiring and employment processes. It reviews definitions of “a qualified person with a disability” and “essential functions” in the context of employment. It discusses “reasonable accommodations” that are required of employers under the ADA, as well as the situation when an accommodation constitutes an “undue hardship” to the employer.

The chapter then reviews a number of additional employment-related issues, including:

- qualification standards and selection criteria
- nondiscrimination in the hiring process
- post-offer employee medical examinations and inquiries
- nondiscrimination prohibitions on limiting, segregating, or classifying applicants and employees because of disability
- insurance and other benefits
- opportunities for advancement, performance standards, and training opportunities

Finally, the chapter reviews nondiscrimination responsibility of One-Stops in their contractual relationships with other organizations, prohibitions against discrimination on the basis of relationship or association, and prohibitions against retaliation or coercion resulting from pursuing nondiscrimination compliance.

### WIA Title I Recipients as Employers

One-Stop entities may chiefly focus on the employment and training assistance they deliver in the form of aid, benefits, services, and training that are offered to the public. As WIA Title I financially assisted entities, they must ensure that the entire public has access to these opportunities, including persons with disabilities for whom reasonable modifications may be required to facilitate participation or benefit. These requirements have been discussed in Chapter Two, and Chapter Four included assessment in each of the areas

#### 29 CFR §37.5

##### **What forms of discrimination are prohibited by this part?**

No individual in the United States may, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIA Title I--financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIA Title I--funded program or activity.

where specific provision for persons with disabilities is required.

At the same time as One-Stop entities seek to assist persons with disabilities in securing or changing employment, the entities themselves are employers. As employers, all recipients of WIA Title I financial assistance must ensure that they do not discriminate against persons with disabilities in their own employment policies and practices.

## Overview of Legal Standards and Requirements

The Section 188 regulations are explicit in prohibiting discrimination in the employment practices of WIA Title I financially assisted programs or activities and in extending that prohibition to any One-Stop partner to the extent that they conduct a program or activity as part of the One-Stop delivery system [29 CFR §37.10 (a)]. In addition, the Section 188 regulations incorporate, by reference, the implementing regulations of subparts B, C, and Appendix A of Section 504 of the Rehabilitation Act of 1973 as amended [29 CFR §§37.3 (b); 37.10 (d)]. And they caution recipients that are public entities to be mindful of the requirements of Titles I and II of the ADA, which pertain to them [29 CFR §37.10 (c)].

Title II prohibits all public entities from discriminating against qualified individuals with disabilities in their employment policies and practices [28 CFR §35.140(a)].

Title I of the ADA, by its incorporation in 1992 as an amendment to Section 504 of the Rehabilitation Act of 1973, and by reference in Section 188, is held to apply to all WIA Title I recipients. Its basic mandate is that an employer cannot discriminate against an otherwise qualified person with a disability in any aspect of the employment relationship. Activities that are part of the employment relationship include recruitment, the application process, testing, interviewing, hiring, assignments, evaluation, discipline, medical examinations, compensation, promotion, on-the-job training, layoff/recall, termination, leave, benefits such as health insurance, and any other terms, conditions, and privileges of employment.

## Examples of Prohibited Employment Policies and Practices

### 29 CFR §37.10

#### To what extent are employment practices covered by this part?

(a) Discrimination on the ground of race, color, religion, sex, national origin, age, disability, or political affiliation or belief is prohibited in employment practices in the administration of, or in connection with:

- (1) Any WIA Title I-financially assisted program or activity; and
- (2) Any program or activity that is part of the One-Stop delivery system and is operated by a One-Stop partner listed in Section 121(b) of WIA, to the extent that the program or activity is being conducted as part of the One-Stop delivery system.

### 28 CFR §35.140

#### Employment discrimination prohibited.

(a) No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under ~~29 CFR §37.10~~ program, or activity ~~employed by or practice of~~ as a recipient's practices related to employment, including but not limited to:

- (1) Recruitment or recruitment advertising;
- (2) Selection, placement, layoff or termination of employees;
- (3) Upgrading, promotion, demotion or transfer of employees;
- (4) Training, including employment-related training;
- (5) Participation in upward mobility programs;
- (6) Deciding rates of pay or other forms of compensation;
- (7) Use of facilities; or
- (8) Deciding other terms, conditions, benefits and/or privileges of employment.

Under federal nondiscrimination regulations, the following actions in the area of employment are prohibited:

1. Refusing to make reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability, unless the public entity can prove that the accommodation would pose an undue hardship.
2. Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of the public entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant.
3. Using qualification standards, employment tests, or other selection criteria that screen out, or tend to screen out, an individual with a disability, unless these criteria are job-related and consistent with business necessity.
4. Making pre-employment inquiries related to an individual's disability or medical history or refusing to hire an individual on the basis of the person's disability or medical history (unless the rejection is job-related and consistent with business necessity, and job performance cannot be accomplished with reasonable accommodation).
5. Failing to select and administer tests concerning employment so as to ensure that, when a test is administered to an applicant or employee with impaired sensory, manual, or speaking skills, the test results accurately reflect the individual's aptitude or achievement level (or whatever other factor the test purports to measure) rather than reflecting the person's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).
6. Making medical inquiries or conducting medical examinations of applicants or employees, or taking actions against individuals with disabilities based on medical or related information, in a manner prohibited by federal disability law.
7. Limiting, segregating, or classifying a job applicant or employee because of his or her disability in a way that adversely affects the individual's employment opportunities.

8. Participating in a contractual or other arrangement or relationship that subjects either a qualified applicant or an employee with a disability to discrimination.
9. Utilizing standards, criteria, or methods of administration (a) that have the effect of discrimination on the basis of disability; or (b) that perpetuate the discrimination of others who are subject to common administrative control.
10. Denying employment opportunities to or otherwise discriminating against a qualified individual, whether or not that individual has a disability, because he or she has a relationship or association with a person with a disability.
11. Discriminating against an individual because he or she has opposed an employment practice of the employer; has filed a complaint; or has testified, assisted, or participated in an investigation, proceeding, or hearing to enforce provisions of federal disability law.

## BASIC DEFINITIONS

### Who is a "Qualified Individual with a Disability?"

As mentioned in Chapter Two, employers may not discriminate against "qualified individuals with disabilities," either as job applicants or employees. For the purposes of employment, a qualified individual with a disability is a person with a disability who satisfies the requisite skill, experience, education, and other job-related requirements for the job and can perform the essential functions of the job, with or without reasonable accommodation [29 CFR §1630.2(m)].

***Clearly, all individuals with disabilities are not necessarily "qualified individuals with disabilities."*** For example, a One-Stop Center is hiring for a certified public accountant position. Jill, who has a psychiatric disability, applies for the position. She has some bookkeeping experience, but she is not a certified public accountant and cannot perform the essential functions of the job in question with or without reasonable accommodation. The Center can reject Jill because she is not qualified for the position. On the other hand, Lisa, who has a visual disability, applies for the position. She is a certified public accountant and can perform all essential job functions. Lisa is qualified for the position.

#### 29 CFR 37.4

*Qualified individual with a disability* means:

(1) With respect to employment, an individual with a disability who, with or without reasonable accommodation, is capable of performing the essential functions of the job in question;

#### 29 CFR §1630.2

Definitions.

(m) *Qualified individual with a disability* means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.



## What are the "Essential Functions" of a Job?

A person is a qualified individual with a disability only if he or she can perform the **essential** functions of a job (with or without reasonable accommodation). If such a person cannot perform functions marginal or incidental to job performance, the individual is still qualified. Clearly, it is critical that employers thoughtfully analyze and document job requirements in a way that clarifies the distinction between essential and non-essential functions of a job.

### 29 CFR §1630.2

Definitions.

(n) *Essential functions*. (1) In general. The term "essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. The term "essential functions" does not include the marginal functions of the position.

Factors to be weighed in determining whether a job function is essential include:

1. whether the reason the position exists is to perform the function;
2. whether a limited number of employees are available to perform the function, or whether the performance of the job function can be distributed among them; and/or
3. whether the function is a highly specialized one that requires special expertise or ability the person hired must have to be able to perform it [29 CFR §1630.2(n)(2)].

Evidence that may be considered in determining whether a particular job function is essential includes, but is not limited to, the following:

- written job descriptions prepared before advertising or interviewing applicants;
- the terms of a collective bargaining agreement;
- the amount of time spent on the job performing the function;
- the work experience of past employees in the job;
- the work experience of current employees in the same or similar jobs;
- the consequences of not requiring that the function be performed; and/or
- the employer's judgment as to which functions are essential [29 CFR §1630.2(n)(3)].

Job descriptions used to identify essential job functions should be written to focus on the desired **outcomes** or **results** of a job, not the manner in which it is usually performed. Often, reasonable accommodation will enable an individual with a disability to achieve the necessary results in

a different way from the more typical approach to the task. What matters is that the desired outcome is achieved.

If an individual with a disability who is otherwise qualified cannot perform one or more essential job functions because of his or her disability, the prospective employer must consider whether there are accommodations that would enable the person to perform these functions. The following section discusses the employer's obligation to provide reasonable accommodation and the limits to that obligation. The section also provides examples of reasonable accommodation.

### **The Obligation to Provide Reasonable Accommodation**

The concepts and definitions of reasonable accommodation, reasonable modifications, and auxiliary aids and services were introduced in Chapter Two. Employers are required to make reasonable accommodation for qualified applicants and employees with disabilities who request such accommodation. Reasonable accommodation means modification or adjustment to a job application process, the work environment, the way in which a job is customarily performed, or employment policies that enable a qualified individual with a disability to be considered for the position, perform the essential functions of the job, or enjoy benefits and privileges of employment equal to those available to a similarly-situated employee without a disability [29 CFR §1630.2(o)(1); 29 CFR §37.4].

### **Examples of Reasonable Accommodation**

Reasonable accommodation in the employment environment means modification of the job application process, the way in which a job is customarily performed, or employment policies that enable a qualified individual with a disability to be considered for the position, perform the essential functions of the job, or enjoy benefits and privileges of employment equal to those available to a similarly-situated employee without a disability [29 CFR §37.4]. Examples of reasonable accommodation include:

- adjusting work schedules,
- restructuring the job,
- reassigning the employee,
- acquiring or modifying equipment and devices,
- providing qualified readers or interpreters, or
- modifying the work site [29 CFR § 37.4; §1630.2(o)(2)].

A further description and case scenario for each of these is presented in Chapter Two.

## Choosing the Accommodation

The employer is obligated to accommodate only known disabilities of qualified applicants or employees [29 CFR §37.8(a)]. The responsibility for providing an accommodation is triggered when an individual with a disability makes a request for an accommodation. The person making the request will often be able to suggest an appropriate accommodation.

### **29 CFR §37.8(a)**

With regard to aid, benefits, services, training, and employment, a recipient must provide reasonable accommodation to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship.

While the need for accommodation may be obvious for some employees with disabilities, not all employees with disabilities require accommodations. If an employee with a known disability is having difficulty performing the job without an accommodation, the employer may ask the employee whether he or she is in need of an accommodation. Under the disability regulations, a qualified individual with a disability is not required to accept the offer of an accommodation [29CFR §37.7(o)(1)]. However, if such an offer is rejected and the person cannot then perform the essential functions of the job, the person will no longer be considered a “qualified” individual with a disability [29 CFR §1630.9(d)].

Once the applicant or employee has requested an accommodation, sufficient information must be gathered to determine the type of accommodation necessary to enable the individual to perform the job. The recipient should seek to identify the precise limitations resulting from the disability. In most instances, the person with a disability is in the best position to identify what is needed. Ask them! When necessary, seek additional information from qualified experts.

### **29 CFR §37.4 (3)**

To determine the appropriate reasonable accommodation, it may be necessary for the recipient to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

An employer need not provide the requested accommodation if an alternative means of accommodation that is less costly, but equally effective, is available. It is mandatory, however, to provide an accommodation that gives a qualified individual with a disability an opportunity to attain the same level of job performance as co-workers with similar skills and abilities.

The Job Accommodation Network (JAN) provides free consulting services for employers, employees, or job-seekers

to help them select accommodations to enable persons with disabilities to perform critical job functions. By contacting JAN, an employer, job-seeker, or a One-Stop recipient can access experienced persons familiar with a large number of accommodations that may be applicable to the barrier an employee must overcome. The majority of accommodations suggested by JAN are inexpensive; many are free. Contact JAN at <http://www.jan.wvu.edu/english/homeus.htm>.

## A Limit: Undue Hardship

The limit on providing reasonable accommodation occurs if an employer can prove that a requested accommodation imposes an "undue hardship" on the employer [29 CFR §37.8 (a); §1630.9(a)]. However, if the originally suggested accommodation is an undue hardship, the employer must consider carefully whether another accommodation exists that would *not* result in an undue hardship.

Undue hardship is defined as significant difficulty or expense incurred by a covered entity in the provision of an accommodation [29 CFR §37.4; §1630.2(p)(1)]. The factors that should be weighed in determining whether a requested accommodation poses an undue hardship include:

- the nature and net cost of the accommodation, taking into consideration the availability of tax credits and deductions and/or outside funding;
- the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;
- the overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of employees and the number, type, and location of its facilities;
- the type of operation or operations of the covered entity, including the composition, structure, and functions of the work force; the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity; and
- the impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the

### 29 CFR §37.4

*Undue hardship* This term has different meanings, depending upon whether it is used with regard to reasonable accommodation of individuals with disabilities, or with regard to religious accommodation.

### 29 CFR §1630.9

#### Not making reasonable accommodation

(1) Reasonable accommodation of individuals with disabilities. (i) In general, "undue hardship" means significant difficulty or expense incurred by a recipient, where consideration is given of the factors set forth in paragraph (ii). (ii) Factors to be considered in determining whether an accommodation would impose an undue hardship on a recipient include: (A) The nature and net cost of the accommodation, taking into consideration the availability of tax credits and deductions, and/or outside funding, for the accommodation;

(B) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, including:

- (1) The number of persons aided, benefitted, served, or trained by, or employed at, the facility or facilities, and
- (2) The effect the accommodation would have on the expenses and resources of the facility or facilities;

(C) The overall financial resources of the recipient, including:

- (1) The overall size of the recipient,
- (2) The number of persons aided, benefitted, served, trained, or employed by the recipient, and
- (3) The number, type and location of the recipient's facilities;

(D) The type of operation or operations of the recipient, including:

- (1) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient, and
- (2) Where the individual is seeking an employment-related accommodation, the composition, structure and functions of the recipient's workforce; and

(E) The impact of the accommodation upon the operation of the facility or facilities, including:

- (1) The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties, and
- (2) The impact on the facility's ability to carry out its mission.

facility's ability to conduct business [29 CFR §37.4; §1630.2(p)(2)].

The regulations require that the resources available to the employee's specific work site must be considered, in addition to consideration of the resources of the covered entity as a whole. The regulations also stress that net cost (taking into consideration the availability of tax credits, tax deductions, and/or outside funding) is a relevant factor.

If a recipient believes that a requested accommodation poses an undue burden, the burden of proof rests with the recipient to provide a written statement demonstrating the burden in light of all of the factors included in the definition of undue hardship in 29 CFR §37.4. The employer must also attempt to identify an alternative accommodation that would not impose a hardship.<sup>1</sup> In cases in which the accommodation would pose an undue hardship for the employer, Title I of the ADA provides that the individual with the disability should be given the option of paying for the portion of the cost that constitutes an undue hardship or of providing the accommodation [Appendix to 29 CFR Part 1630 at 414 (1994)]. It must be clearly understood, however, that this option is to be offered as a last resort and only in cases in which providing the requested accommodation would clearly constitute an undue hardship; it is not to be considered a routine cost-saving strategy.

If employees are governed by a collective bargaining agreement, the terms of that agreement may have an impact on whether or not a requested accommodation creates an undue hardship [Appendix to 29 CFR Part 1630, at 414 (1994)].

The EEOC has developed guidance on reasonable accommodation. It is available through the EEOC website: [www.eeoc.gov/docs/accommodation.html](http://www.eeoc.gov/docs/accommodation.html)

## **QUALIFICATION STANDARDS AND SELECTION CRITERIA**

Federal regulations do not prohibit an employer from establishing physical and mental job-related qualification

### **29 CFR §1630.10 Qualification standards, tests, and other selection criteria.**

It is unlawful for a covered entity to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity.

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<sup>1</sup>The full citation of 29 CFR § 37.8 (a), which describes a the burden of proof and other obligations that rest with a recipient in cases of undue hardship is printed in the margin in chapter 2.

standards--including education, skills, and work experience--necessary for job performance, health and safety [29 CFR §1630.10]. One Stop entities are entitled to hire the most qualified person able to perform a job.

The regulations are designed to ensure that people with disabilities are not excluded from jobs that they can perform. However, qualification standards or selection criteria that screen out or tend to screen out an individual with a disability on the basis of disability are not automatically disallowed if they are demonstrably job-related and consistent with business necessity [29 CFR §1630.10]. **"Job-related"** means that a selection criterion must be a legitimate measure or qualification for the specific job for which it is being used. **"Business necessity"** means that a selection criterion may not exclude an individual with a disability because of the disability unless the criterion relates to the essential functions of the job

Even if a standard is job-related and consistent with business necessity, if it screens out an individual with a disability on the basis of disability, the employer must consider whether the individual could meet the standard with reasonable accommodation. For example, it may be job-related and necessary for a One-Stop Center to require that a secretary produce letters and other documents on a word processor. However, it would be discriminatory to reject a person whose disability prevented manual keyboard operation but who could meet the qualification standard using a computer assistive device. Such devices are generally not costly and would not be expected to impose an undue hardship for any One-Stop.

It is important to note that employers may continue to select and hire people who can perform all job functions. However, an employer may not refuse to hire an individual with a disability who, while able to perform the essential functions of the job, cannot perform marginal job functions because of the disability, even though other applicants can perform those marginal functions.

## **NONDISCRIMINATION IN THE HIRING PROCESS**

### **Job Advertisements and Notices**

It is advisable that job announcements, advertisements, and other recruitment notices include information on the essential

functions of the job. Specific information about essential functions will attract applicants, including individuals with disabilities, who have appropriate qualifications.

Information about job openings should be accessible to people with various disabilities. For example, job information should be available in a location that is accessible to people with mobility impairments and in formats accessible to individuals with sensory impairments. While an employer is not obligated to provide written information (such as job descriptions) in alternative formats in advance of any request, the information in alternative formats must be made available in a timely manner once it has been requested.

## Testing

Employers may use any kind of test to determine job qualifications. However, if a test screens out or tends to screen out an individual with a disability or a class of such individuals on the basis of disability, it must be job-related and consistent with business necessity [29 CFR §1630.10]. For example, an administrator's office seeking to hire a secretary may continue to use a typing test that excludes individuals who type less than sixty words per minute if typing is an essential function of the job and sixty words per minute is the expected level of performance for employees in the job category.

Federal nondiscrimination regulations require that tests be given to people who have impaired sensory, speaking or manual skills in a format and manner that does not require use of the impaired skill, unless the test is designed to measure that skill [29 CFR §1630.11]. The purpose of this requirement is to ensure that tests accurately reflect a person's job skills, aptitudes, or whatever else the test is supposed to measure, rather than impaired skills that are not required to perform essential job functions. This requirement applies the reasonable accommodation obligation to testing.

Some examples of alternative test formats and accommodations include:

- substituting a written test for an oral test (or written instructions for oral instructions) for people with impaired speaking or hearing skills;

### **29 CFR §1630.11 Administration of Tests.**

It is unlawful for a covered entity to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

- administering a test in large print, in Braille, by a reader, or on a computer for people with visual or other reading disabilities;
- allowing people with visual or learning disabilities or who have limited use of their hands to record test answers by tape recorder, dictation or computer;
- providing extra time to complete a test for people with impaired writing skills or certain learning disabilities;
- allowing individuals with disabilities who function better or worse at certain times of day because of the effects of medication or changing energy levels to take the test at a time when they can do their best;
- ensuring that a test site is physically accessible to a person with a mobility impairment;
- allowing a person with a disability who cannot perform well if there are distractions to take a test in a separate room, unless the ability to take the test in a group setting is relevant to essential job functions being tested; and
- allowing rest breaks for people with mental and other disabilities who need that relief.

## **Pre-employment Inquiries**

Federal nondiscrimination regulations prohibit pre-offer inquiries regarding the existence of an applicant's disability or the nature and severity of the disability on application forms, in job interviews, and in background or reference checks [29 CFR §1630.13(a); §32.15]. Pre-offer medical inquiries or medical examinations are also prohibited [29 CFR §1630.13(a); §32.15]. These requirements are intended to redress a historically common occurrence: the rejection of people with disabilities before their merits are considered, often based on myths and misinformation about their disability. Employers *may* make pre-employment inquiries into the ability of the applicant to perform job-related functions [29 CFR §1630.14(a); §32.15]. However, blanket questions such as "Do you have a disability?" or "How many times have you been hospitalized in the last five years and for what?" are not permissible. Employers may also not ask such questions as, "Have you ever been treated by a psychiatrist or psychologist?" and "Are you taking any prescribed drugs?" Questions concerning an applicant's workers' compensation claims history are also prohibited at the pre-offer stage.

Employers may ask all applicants to describe or demonstrate how they will perform the functions of the job with or without reasonable accommodation. Employers may also ask an



individual with a known disability to describe or demonstrate how functions of the job will be performed, whether or not all applicants in the job category are so asked [29 CFR §1630.14(a); §32.15]. If a demonstration of how the proposed accommodation would work in practice is required, the employer must provide the reasonable accommodation for the demonstration.

It is important to note that One-Stop entities have an obligation to make reasonable accommodations to enable an applicant with a disability to apply for a job. For example, individuals with visual or learning disabilities or other mental disabilities may require assistance in filling out application forms. One-Stops must also provide a reasonable accommodation, if needed, to enable an applicant to have equal opportunity in the interview process. Needed accommodations for interviews may include an accessible location for people with mobility impairments, a sign language interpreter for a person with a hearing impairment, or a reader for a person with a visual impairment. One-Stops may find it helpful to include a statement in job notices and/or job application forms, that applicants who need accommodation for an interview should request this in advance.

## **POST-OFFER AND EMPLOYEE MEDICAL EXAMINATIONS AND INQUIRIES**

### **Inquiries Following a Conditional Offer**

Once an offer of employment has been extended, it may be conditioned on the results of a medical examination if all individuals in the same job category are examined and if the information obtained is kept confidential [29 CFR §1630.14(b)]. Medical inquiries at this stage of the employment process are unrestricted. However, there are limitations on how medical information gathered at this stage may be used. If the results of the medical examination are used to screen out applicants with disabilities, the criteria must be job-related and consistent with business necessity [29 CFR §1630.14(b)(3)].

### **Employee Medical Examinations and Inquiries**

Once an employee starts work, any health-related inquiries or medical examinations must be job-related and consistent with

business necessity [29 CFR §1630.14(c)]. Medical examinations or inquiries may be conducted when there is a need to determine whether an employee is still able to perform essential job functions. For example, if an employee repeatedly falls asleep on the job, has excessive absenteeism, or exhibits difficulty performing essential job functions, a medical examination may be required to determine fitness for job duty and/or the need for reasonable accommodations.

Under Title I of the ADA, employers may conduct periodic examinations and other medical screening and monitoring required by federal, state or local laws [Appendix to 29 CFR Part 1630, at 413 (1994)]. The Title I regulations provide that an employer may defend an alleged discriminatory action by showing that the action was taken in compliance with another federal law or regulation [29 CFR §1630.15(e)]. An action taken to comply with state or local law must be consistent with the ADA [Appendix to 29 CFR Part 1630, at 413 (1994)]. For example, if a state or local law required that employees in a particular job be tested periodically for AIDS or the HIV virus, the ADA would **prohibit** such an examination unless an employer can show that it is job-related and consistent with business necessity or required to avoid a direct threat to health or safety.

### **Medical Files**

Employers are required to maintain medical files separate from employees' personnel files to ensure against unwarranted disclosure of the person's disability [29 CFR §37.15; §§1630.14(b)(1), (c)(1), and (d)(1)]. Although confidentiality must be maintained, an employer may inform supervisory personnel about an individual's medical restrictions or necessary accommodations. First aid or safety personnel may be informed if special treatment or evacuation assistance may be necessary. Disclosure is also permitted to: (1) government officials investigating compliance with federal disability law; (2) state workers' compensation or second injury fund offices; and (3) the employer's health or life insurance companies [Appendix to 29 CFR Part 1630, at 412(1994)].

### **Drug Testing**

Federal nondiscrimination regulations do not require or prohibit testing employees for illegal use of drugs [29 CFR

§1630.16(c)(1)]. However, any additional information obtained from drug tests besides whether the individual is currently engaging in the illegal use of drugs, such as the presence of a prescription medication to control a particular disability, must be treated as confidential medical information [29 CFR §1630.16(c)(3)]. The employer can require drug use tests at any stage of the employment process.

### **Direct Threat to Health or Safety**

As discussed in Chapter Two, federal nondiscrimination regulations do not require an employer to hire or continue to employ an individual who poses a direct threat to the health or safety of the individual or others [29 CFR §1630.15(b)(2)]. The direct threat standard is a strict one. The term is defined as "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation" [29 CFR §1630.2(r)]. Speculative or remote risks are not sufficient to constitute a significant risk under this provision. In determining whether an individual would pose a direct threat, the factors to be considered include:

1. the duration of the risk;
2. the nature and severity of the potential harm;
3. the likelihood that the potential harm will occur; and
4. the imminence of the potential harm [29 CFR §1630.2(r)].

The employer must rely on the most current medical knowledge and/or objective, factual evidence concerning the individual, not on generalizations or stereotypes, to demonstrate the existence of a direct threat to health or safety. The assessment must consider whether accommodations could be provided that would enable the individual to safely perform the essential functions of the job [29 CFR §1630.2(r)].

A specific provision of Title I of the ADA applies the direct threat analysis to food handlers with infectious or communicable diseases. The Secretary of the U.S. Department of Health and Human Services is responsible for generating a list of infectious and communicable diseases that are transmitted by food handling. If a person with a disability has one of these diseases and there is no reasonable accommodation that can eliminate the risk of transmitting the disease, the employer can refuse to hire the applicant or can reassign an incumbent to a position where he

or she does not pose a direct threat to health or safety [29 CFR §1630.16(e)].

#### **LIMITING, SEGREGATING, OR CLASSIFYING JOB APPLICANTS OR EMPLOYEES**

An employer or other covered entity may not limit, segregate, or classify an individual with a disability in a manner that adversely affects the individual's employment opportunities because of his or her disability [29 CFR §1630.5]. Under federal statutes and regulations, an individual with a disability must have equal access to any employment opportunity available to a similarly situated individual who is not disabled. This includes access to opportunities and benefits extended to current employees as well as those offered during the recruitment process.

#### **29 CFR §1630.5 Limiting, segregating, and classifying.**

It is unlawful for a covered entity to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of disability.

#### **Insurance and Other Benefit Plans**

The requirement that individuals may not be limited, segregated, or classified because of a disability in a way that adversely affects their employment opportunities applies to health insurance and other benefit plans provided by the One-Stop Center to its employees. Included are life insurance and pension plans, as well as to other benefits and privileges of employment. If an employer provides insurance or other benefit plans to its employees without disabilities, it must provide equal access to the same coverage to its employees with disabilities [Appendix to 29 CFR Part 1630, at 404 (1994)].

An employer cannot fire or refuse to hire an individual with a disability because the employer's current health insurance plan does not cover the individual's disability or because the individual may increase the employer's future health care costs. Also, an employer cannot fire or refuse to hire an individual (whether or not that individual has a disability) because the individual has a family member or dependent with a disability who is not covered by the employer's current health insurance plan or who may increase the employer's future health care costs.

#### **Other Benefits and Privileges**

Nondiscrimination requirements, including the obligation to make reasonable accommodation, apply to all social or

recreational activities provided or conducted by an employer, to any transportation provided by an employer for its employees or applicants, and to all other benefits and privileges of employment [29 CFR §1630.4 and Appendix to 29 CFR Part 1630, at 404 (1994)]. Picnics, parties, award ceremonies, and other social functions held by or sponsored by One-Stop entities must be held in accessible locations with interpreters or other accommodations available when needed. Employees with disabilities must be given an equal opportunity to participate in employer-sponsored sports teams, leagues, or recreational activities such as hiking or biking clubs. (However, no activity need be cancelled because an employee with a disability cannot participate, or participate fully, because of the nature of the disability.) Any special facilities provided to employees--such as lounges, cafeterias, exercise rooms and gymnasiums--must be equally available to employees with disabilities. Transportation provided to employees must also be accessible to employees with mobility impairments.

## **OPPORTUNITIES FOR ADVANCEMENT**

The nondiscrimination requirements that apply to initial selection apply to all aspects of employment, including opportunities for advancement [29 CFR §1630.4]. For example, an employer may not discriminate with respect to promotion, job classification, evaluation, disciplinary action, opportunities for training, or participation in meetings and conferences. Assuming that an employee is not interested in or qualified for advancement--whether resulting from prejudice or mistaken sympathy--is not permissible. Also, the need to provide reasonable accommodation to enable the person with a disability to perform essential job functions may not appropriately be considered as a criterion for advancement. Employers should ensure that supervisors and managers who make decisions regarding promotion and advancement are aware of ADA nondiscrimination requirements.

## **Performance Standards**

Employees with disabilities may be held to the same standards of production and performance as other employees without disabilities who are performing similar functions. No "special treatment" is required in performance evaluations. If an employee with a disability is not performing well, an

employer is entitled to take the same disciplinary action that would be taken against other similarly situated employees. The employer is even permitted to make medical and other professional inquiries to determine how the disability may be affecting job performance, provided the inquiries are job-related and consistent with business necessity. However, an employee with a disability who needs an accommodation to perform an essential job function should not be evaluated on his or her ability to perform the function without the accommodation and should not be downgraded because the accommodation is necessary.

### **Training Opportunities**

Employees with disabilities must be provided equal opportunities to participate in training that will enable them to improve their job performance or to qualify for advancement [29 CFR §1630.4(g)]. In order to enable employees with disabilities to benefit from training, reasonable accommodation must be made, unless the employer can prove that it would constitute an undue hardship. For example, interpreters and note takers may need to be provided for employees who have hearing impairments. Training conducted directly by the recipient or made available through contractors must be held in locations accessible to persons with mobility disabilities.

### **CONTRACTUAL OR OTHER RELATIONSHIPS**

Employers may not do anything through a contractual relationship that they cannot do directly [29 CFR §1630.6(a)]. Examples of entities with which an employer might contract include employment referral services, training programs, labor unions, and organizations providing fringe benefits to employees [29 CFR §1630.6(b)].

#### **29 CFR §1630.6 Contractual or other arrangements.**

(a) In general. It is unlawful for a covered entity to participate in a contractual or other arrangement or relationship that has the effect of subjecting the covered entity's own qualified applicant or employee with a disability to the discrimination prohibited by this part.

As part of the self-assessment process and of future reviews conducted to ensure continued compliance with federal nondiscrimination regulations, One-Stop Centers should examine the recruitment and placement practices of any employment agencies they utilize (whether for temporary or permanent job placements) to ensure that the employment agencies' practices are in compliance with disability statutes. Particular attention should be given to the methods employment agencies use to recruit or screen applicants.

One-Stop Centers should inform employment agencies they work with of their mutual obligation to comply with federal nondiscrimination regulations. In addition, any apprenticeship and job-training programs with which Local Workforce Investment Areas are associated must be free from discrimination in their treatment of participants.

For example, a One-Stop Operator uses an employment agency to recruit prospective employees for a management position. The agency places a newspaper advertisement with a telephone number that all interested persons must call; no address is given and the employer's identity is not cited. The advertisement mentions no TTY/TDD number. A qualified applicant with a hearing impairment uses a relay service to reach the employment agency; the interviewer finds using the service time-consuming and frustrating. As a result of her initial impression that the candidate would be a "hassle" to work with, she does not include the individual's resume in a selected group of resumes of qualified applicants for further consideration--even though the applicant has met all stated qualifications. ***The One-Stop is responsible for the contractor's discriminatory hiring practices.***

Labor unions are covered by the ADA and have the same obligation as the employer to comply with its requirements. A Local Workforce Investment Area cannot take any action through a labor union contract that would be impermissible for it to take directly. For example, if a union contract contained physical requirements for a particular job that screened out people with disabilities who were qualified to perform the job, and these requirements were not job-related and consistent with business necessity, they could be challenged as discriminatory by a qualified individual with a disability.

#### **DISCRIMINATION ON THE BASIS OF RELATIONSHIP OR ASSOCIATION**

As discussed in Chapter Two, employers sometimes make damaging and unfounded assumptions about how a current or prospective employee's relationship to a person with a disability will affect job performance. To protect individuals from this form of discrimination, federal disability regulations bar employers from discriminating against employees, or potential employees, because of their known relationship or association with a person who has a disability [29 CFR §37.7 (I); §1630.8]. This ADA provision makes it illegal to fire or

refuse to hire someone because of assumptions about how their relationship with a person who has a disability will affect either their work schedule or their participation in an employer-provided health insurance plan. Such persons also cannot be required to accept different insurance terms than those offered to other individuals.

The requirement prohibiting discrimination on the basis of "relationship or association" refers not only to family and other close personal relationships, but also to other social or business relationships and associations [Appendix to 29 CFR Part 1630, at 406 (1994)].

## **RETALIATION AND COERCION**

Also as discussed in Chapter Two, it is unlawful to discriminate against an individual because he or she has opposed an employment practice of the employer, has filed a complaint, or has testified, assisted, or participated in an investigation, proceeding, or hearing to enforce provisions of the Act [29 CFR §37.11 (a) (1-3); §1630.12(a)]. It is also unlawful to coerce, intimidate, threaten, harass, or interfere with any individual in the exercise or enjoyment of any right protected by the ADA or because that individual aided or encouraged any other individual to exercise any right protected by the ADA [29 CFR §1630.12(b)].

## **IMPLEMENTING THE REVIEW OF EMPLOYMENT POLICIES AND PRACTICES**

Federal nondiscrimination regulations require One-Stop Centers and entities to ensure that qualified persons with disabilities are given equal opportunity to compete for available jobs, to maintain their jobs, and to advance through the organization as far as their abilities will take them. Qualified persons with disabilities must also have equal access to all benefits and privileges afforded other employees. To ensure that a One-Stop is in compliance with these regulations, it is recommended that an Access Team conduct a thorough review of system-wide policies and practices in the area of employment. In particular, it is recommended that a review of One-Stop Center job descriptions be conducted, evaluating whether or not those descriptions accurately represent "essential job functions." Access Teams should make certain to receive input from all



of the One-Stop partnering agencies and organizations. Resource 5-1 is provided as an aid in assessing reasonable accommodations that could be provided at all stages in the employment process: from recruitment and hiring, to on-the-job, to access to training opportunities and social activities.

## Resource 5-1: Reasonable Accommodations Checklist

*The first column illustrates many common forms of reasonable accommodation. For each stage of the employment process where the reasonable accommodation indicated is already available upon request, mark with an X. Mark with a D those that should be developed.*

	Recruiting and Hiring	On-the- job	Training Activities	<b>Social Activities</b>
Large print materials (e.g. 18 pt)				
Braille materials				
Audio cassettes				
Computer diskette				
Readers				
Interpreters				
Note takers				
TTY/TDDs				
Amplified & hearing aid compatible telephones				
Assistive listening systems				
<b>Website accessibility</b>				
Open/Closed captioning				
Real-time captioning (CART)				
Adaptive computer hardware <b>(specify)</b>				
Adaptive computer software <b>(specify)</b>				
Flex-time work schedules				
Part-time work schedules				
Work-site modifications				
Job restructuring				
Job reassignment				
Other (list)				

## CHAPTER FIVE: Employment Policies and Practices

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## CHAPTER SIX: Program and Facility Access

DRAFT, 7/25/2000

One Stop Centers must ensure that programs and activities – the aid, benefits, services, and training that are offered to the public – are accessible to and usable by individuals with disabilities. A significant factor in program accessibility is the facilities in which programs and activities are conducted. Accessible facilities is the topic of this chapter.

This section begins with a discussion of the concept of "program accessibility." Next, it reviews the general ADA Title II and Section 504 requirements for providing access in existing facilities, presenting examples of the many methods of compliance that may be acceptable under the regulations. It also discusses other significant requirements pertinent to program accessibility in existing facilities: providing access to historic properties and historic preservation programs, providing access in leased space, and developing barrier removal plans to make programs accessible. The "fundamental alteration/undue burden" exception, as it applies to facilities, is explained. Next, the chapter reviews both Title II and Section 504 requirements for new construction and alterations. Finally, it discusses the importance of planning for the maintenance of accessible features.

At the end of the chapter, a practical guide to conducting the program facility accessibility portion of the self-assessment is presented. Worksheets are provided that can be used to conduct the self-assessment and serve as the basis for planning modifications. One-Stop systems may use them as they are or adapt them, to help identify areas in which nonstructural or structural modifications may be needed in order to be in compliance.

### PROGRAM ACCESSIBILITY

Ensuring program accessibility is an important aspect of enhancing opportunity for persons with disabilities. Both Title II of the ADA and Section 504 prohibit One-Stops from denying people with disabilities equal opportunity to participate in programs and activities because their facilities are inaccessible to, or unusable by, them [28 CFR §35.149 and 34 CFR §104.21]. Both regulations contain two standards to be used in determining whether a covered entity's programs and activities are accessible to individuals with disabilities. One standard deals with "existing"

#### 28 CFR §35.149

##### **Discrimination prohibited.**

Except as otherwise provided in §35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

facilities; the other deals with new construction and alterations.

For existing facilities, Title II and Section 504 require covered entities to operate each program so that, when viewed in its entirety, the program is readily accessible to and usable by people with disabilities [28 CFR §35.150(a) and 34 CFR §104.22(a)]. This is known as the “**program accessibility**” standard. A covered entity must make its programs and activities accessible unless it can demonstrate that required modifications would result in a fundamental alteration of the program or in undue financial and administrative burdens. The concept of program accessibility must be understood because it will serve as a guideline in assessing existing facilities and in formulating structural and nonstructural solutions to any physical access problems found in them.

Both Title II and Section 504 require that a new or altered facility (or the part that is new or altered) be readily accessible to and usable by individuals with disabilities [28 CFR §35.151 and 34 CFR §104.23]. The new construction and alterations requirements focus on providing physical access to buildings and facilities rather than on providing access to programs and services. There is no fundamental alteration or undue burden limitation on the new construction and alterations requirements.

It is important to note that many people associate the concept of program accessibility primarily with individuals with mobility impairments. This is a mistaken association that may limit one's consciousness of the full range of persons with disabilities. There are less than one million individuals who use wheelchairs in the United States. Four times as many individuals have serious vision impairments; twenty-four times as many individuals have hearing impairments. One Stop officials must ensure that their programs and activities are accessible to qualified individuals with many different types of disability. To meet this obligation, One Stop officials should ensure that, when they conduct the program accessibility portion of the self-assessment, they consider such issues as providing accessible building signage, providing alarms with visible signals, and providing accessible public telephones.

## What is a Program or Activity?

## 28 CFR §37

### Preamble, Section 37.3

The requirement of program accessibility means that when viewed in its entirety, the program or activity provided by the recipient must be readily accessible to qualified individuals with disabilities. 29 CFR 32.27. The recipient must ensure that participants with various physical and mental disabilities will have access to the program or activity. This obligation to make the program or activity accessible in advance exists independent of a request for a particular accommodation by a specific individual. Therefore, even if an individual with a disability requests an accommodation that would impose an undue hardship on the recipient, the recipient still has an overall obligation to make the program or activity accessible.

Architectural accessibility, by contrast, relates to the construction and design of facilities. 29 CFR 32.28. Architectural accessibility standards are similar to building codes. A recipient must comply with the architectural accessibility standards

## 28 CFR § 37.40

with a disability has requested a reasonable accommodation. 29 CFR

32.13(d) A program or activity, operated  
commonly with the architectural  
accessibility standards, is also  
in part, under title I of WIA, that  
provides either  
accessibility obligations, services, or

(i) Any aid, benefits, services, or training to individuals; or

(ii) Facilities for furnishing any aid, benefits, services, or training to individuals:

(2) Aid, benefits, services, or training provided in facilities that are being or were constructed with the aid of Federal financial assistance under WIA Title I; or

(3) Aid, benefits, services, or training provided with the aid of any non-WIA Title I funds, property, or other resources that are required to be expended or made available in order for the program to meet matching requirements or other conditions which must be met in order to receive the WIA Title I financial assistance.

See the definition of "aid, benefits, services, or training" in this section.

As was discussed in Chapter One, the Section 188 regulations define a WIA Title I-funded program or activity as 1) any aid, benefits, services, or training to individuals that is operated by a recipient and funded, in whole or in part, under Title I of WIA. WIA Title I-funded programs and activities also include 2) the facilities where the aid, benefits, services, or training are furnished, 3) any other aid, benefits, services, or training conducted in facilities that were constructed with the aid of WIA Title I financial assistance; as well as 4) any aid, benefits, services, or training that are funded by a source other than WIA Title I, but required to meet matching requirements under WIA Title I [29 CFR §37.4]. The definition specifies facilities in two cases: any facilities where WIA Title I-funded aid, benefits, services, or training are conducted; and all of the activities that are conducted at facilities that are themselves constructed with the aid of WIA Title I financial assistance. The common theme is WIA Title I financial assistance. Whether the program is operated, or the facility constructed with the assistance of WIA Title I funds, it is considered subject to the accessibility provisions covering WIA Title I-funded programs and activities.

The Civil Rights Restoration Act of 1987 included an amendment to Section 504 of the Rehabilitation Act of 1973, which clarified the entities that must comply. Included are 1) state and local governmental entities of virtually all types; 2) educational institutions and school systems; 3) corporations, partnerships, private organizations, or sole proprietorships whose business is to provide education, health care, housing, social services, or parks and recreation; 4) the entire plant or facility to which federal financial assistance is extended; and 5) any other entity established by partnerships of any of the other covered entities that receives federal financial assistance. The intention of the act was to “restore the broad scope of coverage” of several civil rights laws. Though taking a different approach, the resulting breadth of coverage is similar to that achieved in the Section 188 definition of “recipient” that was discussed in Chapter One.

Under federal regulations, the term "program or activity" embraces the programs, activities, and services offered by a recipient entity in fulfillment of its mission. It spans all offerings open to any of the audiences served by a recipient. The following, though not exhaustive, are examples of programs or activities that, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities: education and training; programs; food services;

library and resource room services; health services; counseling; recreation; transportation; vocational programs; apprenticeship programs; and employer recruitment opportunities.

### **The Entire Scope of Programs and Activities**

Each recipient should consider the entire scope of its overall operation as one program made up of several parts or elements. The recipient should ensure that its entire program, when viewed as a whole, is readily accessible to and usable by individuals with disabilities. In order to understand more fully the concept of viewing programs or activities offered in existing facilities "**in their entirety**," the following discussion presents the application of the program accessibility for existing facilities standard to programs and activities at One-Stop buildings and support facilities.

With respect to existing facilities, One-Stop systems should provide for access to persons with disabilities at centers or training facilities dispersed throughout their service area so that persons with disabilities can attend programs at locations comparable in convenience to those available to persons without disabilities. A One-Stop system does not have to make all of its existing satellite and training facilities accessible to persons with disabilities, provided that all programs offered in inaccessible buildings are also available at other accessible sites in the service area, and that the accessible buildings are comparable in convenience to those available to persons without disabilities. It is important to note that One-Stops may not make only one facility or part of a facility accessible if the result is to segregate persons with disabilities in a single setting.

In looking at programs in their entirety, Title II and Section 504 take a much broader view of support facilities such as rest rooms, water fountains, and parking spaces in existing facilities. Sufficient numbers of these accessible elements should exist that are reasonably convenient, usable in inclement weather, and appropriate to the use of a facility. Usage of a building is an important factor in addressing program accessibility concerns such as the number of rest rooms and drinking fountains required. Buildings in which an individual may spend extended periods of time should meet a higher degree of accessibility than those in which an individual spends relatively short periods of time.

## PROGRAM ACCESS IN EXISTING FACILITIES

Under Title II, an “existing facility” includes facilities that were already constructed, or for which ground-breaking had begun, prior to the effective date of the Title II regulation (January 26, 1992). Under the Section 504 regulation for federally assisted programs, an existing facility is defined as any facility that was already constructed, or for which ground-breaking had begun, prior to the effective date of the Section 504 regulation (June 3, 1977).

Depending on the date of construction, some facilities may be existing facilities for purposes of Title II but also constitute new construction under the Section 504 regulation. These include buildings constructed on or after June 3, 1977, but before January 26, 1992. In these cases, One Stops required to comply with both the Title II and the Section 504 regulations must meet not only the standards for existing facilities under Title II, but also the applicable facility accessibility standards for new construction and alterations under Section 504.

As mentioned earlier in the chapter, both Title II and Section 504 require covered entities to operate each program or activity located in an existing facility in such a way that the programs and activities -- and under Title II, also “services” -- when viewed in their entirety, are readily accessible to and usable by individuals with disabilities [28 CFR §35.150(a) and 34 CFR §104.22(a)]. Under both regulations, accessibility to existing structures is defined functionally. Neither regulation requires public entities or recipients to make all existing facilities, or every part of the existing facility, accessible to and usable by individuals with disabilities, as long as the program viewed as a whole is accessible.

### Existing Facilities and Architectural Accessibility Standards

It is important to understand that whether a particular program or activity is accessible is determined not by compliance with an architectural accessibility standard but by considering whether the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. However, in an assessment of program accessibility in existing facilities, architectural accessibility standards such as the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG)

#### 28 CFR §35.150

##### Existing facilities.

(a) *General.* A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not- (1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities.

#### 28 CFR §35.150

##### Existing facilities.

(b) *Methods.* (1) *General ...*

A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section . . . . In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.



or the Uniform Federal Accessibility Standards (UFAS) may be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service. ADAAG and UFAS are the architectural standards that constitute compliance with the Title II requirements for new construction and alterations; UFAS also constitutes compliance with the Section 504 requirements for new construction and alterations.

At the end of this chapter, a Facility Checklist is provided that One-Stops can use to assist in identifying architectural barriers, as well as communication barriers that are structural in nature. The Checklist is based on ADAAG.

## Methods of Compliance

Although the program accessibility standard is a rigorous one, both the Title II and Section 504 regulations permit considerable flexibility in how the standard can be met. Both structural and nonstructural methods of achieving program accessibility are acceptable.

Although nonstructural methods of achieving program accessibility are acceptable, nonstructural solutions should not have the effect of segregating people with disabilities or compromising their dignity and independence. Priority consideration must be given to offering programs or activities in the most integrated setting appropriate [28 CFR §35.150(b)(1) and 34 CFR §104.22(b)]. The principle of the “**most integrated setting**” is reiterated in the WIA Section 188 regulations [29 CFR §37.7 (d)].

### **29 CFR §37.7 (d)**

(d) A recipient must administer WIA Title I--financially assisted programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

If no effective nonstructural alternatives can be provided to achieve program accessibility, One Stop centers must make the necessary structural changes [28 CFR §35.150(b)(1) and 34 CFR §104.22(b)]. These changes must conform to standards for new construction and alterations.

Some acceptable methods of making programs accessible are discussed below.

### **1. Reassignment of services to an accessible location.**

The relocation of programs and activities to accessible locations is one method of making programs and activities accessible.

**2. Purchase, redesign, or relocation of equipment.** Other methods of making programs accessible include the purchase, redesign, or relocation of equipment [28 CFR §35.150(b)(1) and 34 CFR §104.22(b)]. "Equipment" includes items that generally make the building functional as well as items that are integral to participation in specific programs, activities, or services, such as work stations, study carrels, and machinery. In many cases, equipment can simply be relocated or raised or lowered to make it usable by an individual with disabilities; in other cases, redesign may be necessary. Redesign of equipment may be a fairly simple and inexpensive process, such as relocating a control panel, replacing grip/twist devices (e.g., doorknobs and drinking fountain faucets) with levers, altering door closure devices, and providing audible or visual signals for individuals with visual or hearing impairments.

It is important to note that the effectiveness of various alternatives should be considered before undertaking the redesign of equipment. For example, a fire alarm that has not been wired to give a visual as well as an audible signal does not automatically violate the Section 504 or Title II regulations. If other methods of communicating danger to individuals with hearing disabilities are provided and are effective in emergency situations, visual signals are not required. In training facilities, cafeterias, and meeting areas, there are generally sufficient numbers of people who would be aware of danger that risk to a person with a hearing disability would be minimal. However, there are situations in which such activity could not be perceived and oral communication would be ineffective. Such situations might include resource rooms or other relatively isolated areas. In such cases, redesign of equipment may be the only effective means of communicating danger to individuals with hearing disabilities.

**3. Assignment of aides.** In some circumstances, aides may be assigned to perform certain tasks that will enable persons with disabilities to participate in programs [28 CFR §35.150(b)(1) and 34 CFR §104.22(b)]. For example, aides may be required to ensure that persons with disabilities are able to exit safely from program areas in the event of an emergency. If equipment in a training room is inaccessible to a person with a disability, in order to meet the program accessibility requirements of Title II and Section 504, a human aide may be assigned to assist the trainee in the training room. Aides or assistants may retrieve books and

other materials for people with mobility impairments if portions of the resource center are inaccessible, and readers may be used to assist resource center patrons who have visual impairments. The aides must be available during the operating hours of the center.

**4. Structural changes to eliminate barriers.** Although structural changes to make existing facilities accessible are not required as a matter of course, they must be undertaken if there is no alternative means to achieve program accessibility [28 CFR §35.150(b)(1) and 34 CFR §104.22(b)]. Structural changes include such alterations as installing a ramp, widening a doorway, or lowering a toilet. As mentioned earlier, structural changes must conform to standards for new construction and alterations [28 CFR §35.150(b)(1) and 34 CFR §104.22(b)].

It is important to keep in mind that structural changes include not only those required in order to provide access to persons with mobility impairments, but also those required to render the program accessible to persons with other disabilities. For example, people with hearing impairments may require assistive listening systems. The full range of disabilities should be kept in mind as program accessibility is considered.

Some One-Stops, faced with severe accessibility problems, have considered the use of back doors and freight elevators to satisfy the program accessibility requirement. Such measures are acceptable only as a last resort and only if the arrangement provides accessibility comparable to that provided to persons without disabilities. If the back door in question is ordinarily locked and can be accessed only by loud knocking that the maintenance crew may or may not hear, then a plan to provide access by means of the back door is not acceptable. A back door is acceptable only if it is kept unlocked during the same hours the front door remains unlocked; if the passageway to and from the floor is accessible, well-lit, and neat and clean; and if the individual with a mobility impairment does not have to travel excessive distances or through such non-public areas as kitchens and storage rooms to gain access. A freight elevator would be acceptable if it were upgraded so as to be usable by passengers generally and if the passageways leading to and from the elevator are well-lit and neat and clean.

In considering such means of access, One-Stops should bear in mind the security requirements of persons with disabilities.

Persons with disabilities should not be required to use poorly lighted entrances or otherwise take undue personal security risks compared to other participants.

Questions are occasionally raised regarding whether carrying an individual with a disability is an acceptable method of providing program access. Carrying is contrary to the goal of providing accessible programs, which is to foster independence. Carrying a person with a disability is **not** permitted as an alternative to structural modifications such as installation of a ramp or a chairlift. Carrying a person with a disability to achieve program accessibility is acceptable only in manifestly exceptional cases.[28 CFR §35.150(b)(1) (Preamble)].

In the very limited situations in which carrying is permitted, carriers must be instructed on the safest and most dignified means of carrying and the service must be provided in a reliable manner [28 CFR §35.150(b)(1) (Preamble)]. Liability issues may be relevant when this option is being considered. LWIA representatives are encouraged to consult with persons with disabilities on the most acceptable method of providing access.

## Fundamental Alterations and Undue Burdens

As in the WIA Section 188 regulation [29 CFR §§37.8 (a); (b)], the Title II regulation does not require a public entity to take any action that would result in a fundamental alteration in the nature of its service, program, or activity or in undue financial and administrative burdens [28 CFR 35.150(a)(3)]. This provision codifies case law interpreting the Section 504 regulation for federally assisted programs.

Compliance with the Title II program accessibility provisions will not generally result in an undue financial or administrative burden [28 CFR §35.150(a)(3) (Preamble)]. Individuals with disabilities should have access to public entities' programs in all but the most unusual situations. When a recipient does justify noncompliance by claiming that compliance would result in a "fundamental alteration" to its program or constitute an "undue burden," both the Section 188 and the Title II regulations place the burden of proof on the public entity [29 CFR §§37.8 (a)(1); (b)(1); 28 CFR §35.150(a)(3)]. Further, a decision regarding whether a burden is undue must be based on all of the recipient's resources available for use in the

### 28 CFR §35.150

#### Existing facilities.

(a) *General ...* (3) ...In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with 35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

funding and operation of the service, program, or activity [29 CFR §§37.8 (a)(2); (b)(2); 28 CFR §35.150(a)(3)].

Although Title II does not specifically define the elements of a fundamental alteration or an undue burden, the Section 188 regulations provide extensive elaboration upon the many factors that must be considered when a WIA Title I recipient wishes to claim a fundamental alteration or an undue hardship [29 CFR §37.4].<sup>1</sup> Operators and their partners must consider the following factors (the same as those already enumerated in Chapters Two and Five) in determining whether an undue burden or hardship exists:

- the nature and net cost of the modification or accommodation, taking into consideration the availability of tax credits and deductions and/or outside funding for the accommodation or modification;
- the overall financial resources of the facility or facilities involved in the provision of the reasonable modification or accommodation; the number of persons aided, benefitted, served, trained by, or employed at, such facility; and the effect on expenses and resources;
- the overall financial resources of the recipient; the overall size of the recipient; the number of persons aided, benefitted, served, trained, or employed; and the number, type, and location of its facilities;
- the type of operation or operations of the recipient; including the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient; and for employment-related modifications, the composition, structure, and functions of the recipient's work force;
- the impact of the accommodation or modification upon the operation of the facility; including the impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties; and the impact on the facility's ability to carry out its mission [29 CFR §37.4].

Under Title II, the decision that compliance would result in an undue burden or fundamental alteration must be made by the

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<sup>1</sup>The full definition of "undue hardship" from 29 CFR §37.4, including the listing of factors that must be considered when making a claim of undue hardship, is reproduced in the previous chapter within the context of employment practices. The factors to be considered in the definition of "undue hardship" are nearly identical with the factors to be considered in determining an "undue burden" in the definition of fundamental alteration.

head of the public entity or his or her designee [28 CFR §35.150(a)(3)]. In addition, the decision must be accompanied by a written statement of the reasons for that decision [28 CFR §35.150(a)(3); 29 CFR §§37.8 (a)(2); (b)(2)].

Finally, the undue burden/fundamental alteration defense is not absolute [28 CFR §35.150(a)(3) (Preamble)]. It does not relieve One-Stop Operators and their partners of all obligations to individuals with disabilities. One-Stop entities must still take any other steps that do not result in an undue burden or fundamental alteration but are necessary to ensure that individuals receive the benefits or services provided by the workforce development system [29 CFR §§37.8(a)(3); (b)(3); 28 CFR §35.150(a)(3)(Preamble)].

### **Designated Historic Buildings**

Some local workforce development systems may include buildings that have a historic designation. Historic properties are properties listed or eligible for listing in the National Register of Historic Places or designated as historic under state or local law [28 CFR §35.104]. The Title II regulation provides that a public entity is not required to take any action that would threaten or destroy the historic significance of a historic property [28 CFR §35.150(a)(2)]. This provision was included in order to avoid possible conflicts between the Congressional mandate to preserve historic properties and the mandate to make all programs and activities located in existing facilities accessible to individuals with disabilities [28 CFR §35.150(b)(2) (Preamble)].

Where One-Stop entities conduct all or a portion of their programs in historic properties and the preservation and experience of the historic property itself are not primary purposes of the program, the historic property itself is not the program. Nonstructural changes that could be made to render the program accessible would include relocating all or part of the program to an accessible facility, purchasing or redesigning equipment, or using other standard methods of program accessibility that would not threaten or destroy significant historic features of the property [28 CFR §35.150(b)(2) (Preamble)]. These changes should be made as expeditiously as possible.

### **Providing Access in Leased Space**

Under the Title II regulation, One-Stop Operators and partners are encouraged, but not required, to lease accessible space. However, once a leased facility is occupied, the One-Stop entities must provide access to all programs, services, and activities conducted in that space [28 CFR §35.151(c) (Preamble)]. The Section 504 regulation contains a similar requirement [34 CFR §104.4(b)(6)]. Leased facilities are subject to the program accessibility requirements for existing facilities or new construction and alterations, depending upon the date that the buildings were constructed or altered [28 CFR §35.151(c) (Preamble)].

Obviously, the more accessible the space is to begin with, the fewer structural modifications will be required for particular employees whose disabilities may necessitate barrier removal as a reasonable accommodation. It will also be both easier and less costly to make programs and activities accessible to and usable by other individuals with disabilities [28 CFR §35.151(c) (Preamble)].

The Department of Justice suggests that public entities attempt to locate space that complies, at a minimum, with the federal requirements for leased buildings contained in the Minimum Guidelines and Requirements for Accessible Design published in the Architectural Barriers Act of 1968 at 36 CFR §1190.34 [28 CFR §35.151(c) (Preamble)]. These guidelines, which apply to the federal government, require that all leased buildings have: (1) an accessible route from an accessible entrance to the building to the parts of the building where the principal activities for which it was leased take place; (2) accessible rest rooms; and (3) accessible parking facilities.

Since One-Stop Operators and partners are responsible for ensuring accessibility to their programs and services that may be held off the center grounds – even those held for only one day, such as job fairs – it is recommended that the One-Stop operator notify all entities that have the authority to lease facilities for center functions of this obligation. It is important to ensure that the appropriate individuals are fully aware of program accessibility requirements as they plan conferences, social functions, or other gatherings on behalf of the One-Stop. In addition, vendors, private foundations, and other entities that lease space from the center in order to provide services to the center should be included in the program accessibility self-assessment. As contracts are renegotiated, accessibility requirements should be addressed in the contracts.

## NEW CONSTRUCTION AND ALTERATIONS

Both Title II and Section 504 require that a new or altered facility (or the part that is new or altered) be readily accessible to and usable by individuals with disabilities [28 CFR §35.151 and 34 CFR §104.23]. However, Section 504 and Title II have different relevant time frames that are applicable to new construction and alterations, as well as different architectural accessibility standards that constitute compliance with requirements for new construction and alterations. Also, unlike Section 504, Title II has requirements regarding curb ramps and alterations to historic properties.

At the present time, a public entity is free to adopt either UFAS or ADAAG in constructing each of its facilities. However, once the choice of standards has been made, the entity must consistently utilize the standard in the construction of the particular facility for which it was adopted. For example, a public entity may not follow ADAAG on one floor of a new building and then follow UFAS on the next floor [*The Americans with Disabilities Act Title II Technical Assistance Manual*, U.S. Department of Justice, November 1993, page 23].

Because it is anticipated that the Title II regulation will be amended in the near future to reference the new ADA Standards, and because compliance with ADAAG would constitute compliance with Section 504 requirements, this Guide suggests that, with respect to new construction and alterations that are in the planning and design stages, recipients adopt ADAAG when constructing or renovating the facilities.<sup>2</sup> Although entities are required to adhere to the current ADAAG, the proposed Guidelines are available for review on the Access Board's website at (<http://www.access-board.gov/ada-aba/guidenprm.htm>).

### 28 CFR §35.151

#### **New construction and alterations.**

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.

(b) *Alteration.* Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992. Accessibility Standards (UFAS) (Appendix A to 41 CFR part 101-19.6) or with the Americans with Disabilities Guidelines for Buildings and Facilities (ADAAG) (Appendix A to 28 CFR part 36) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator contained in 4.1.3(5) and 4.1.5(1)(j) of ADAAG shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facilities is thereby provided.

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<sup>2</sup>On November 16, 1999, the Access Board published a proposed rule in the Federal Register to change the ADA Accessibility Guidelines (ADAAG). This is the first step of a two stage process that may result in new ADA standards. The proposed, revised ADAAG were made available for public comment until May 15, 2000. The Access Board is currently reviewing and analyzing the comments and will deliberate on changes to the proposed guidelines based on the comments. If these proposed guidelines are finalized by the Access Board and formally adopted by the Department of Justice, they will become enforceable standards.



## Coverage Under Both Title II and Section 504

As discussed earlier in the chapter, a public entity covered under both Title II and Section 504 could operate a facility that would be an *existing* facility under Title II and yet constitute *new construction* under Section 504 (e.g., where a facility was built before January 26, 1992, but on or after June 3, 1977). In these cases, public entities that are also recipients of federal financial assistance must meet the program accessibility requirements for existing facilities under Title II as well as the accessibility standards for new construction under Section 504.

## ADAAG and UFAS

Both ADAAG (Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities) and UFAS (Uniform Federal Accessibility Standards) are based on model design standards generated by the American National Standards Institute and, as a result, have a similar format. However, while the requirements of ADAAG and UFAS are generally consistent, there are a number of significant differences. For example, ADAAG contains requirements for TDDs in new construction, while UFAS does not [§4.1.3(17)(c), Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (1991)]. Unlike UFAS, ADAAG requires Braille on signs designating permanent rooms and spaces (e.g., rest room signs, room numbers, exit signs) and on elevator hoistway entrances and elevator car control indicators [§§4.1.2(7), 4.1.3(16)(a), 4.30.4, 4.10.5, and 4.10.12(2), Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (1991)]. There are also differences in the requirements concerning seating and assistive listening systems in assembly areas, the number of accessible check-out aisles in mercantile facilities, and the spacing between the top of handrail gripping surfaces and ramp surfaces [§§4.1.2(18), 4.33.3, 4.33.7, 7.3 and 4.8.5(5), Uniform Federal Accessibility Standards and §§4.1.3(19), 4.33.3, 4.33.7, 7.3 and 4.8.5(5), Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (1991)].

Due to the existence of a wide range of disabilities that vary in severity, it is important to understand that ADAAG and UFAS requirements are minimum accessibility requirements. However, a recipient's adherence to ADAAG or UFAS does not relieve it of its obligation under Title II and Section 504 to make its program accessible to a particular individual.

Questions are sometimes asked concerning the actions that recipients should take if neither ADAAG nor UFAS contain specific standards for a particular type of facility. In such cases, the technical requirements of the chosen standard should be applied to the extent possible. If no standard exists for particular features, those features need not comply with a particular design standard. However, the facility must still be designed and operated to meet other Title II and Section 504 requirements, including program accessibility.

## **Curb Ramps**

Unlike Section 504, the Title II regulation requires that newly constructed or altered streets, roads, and highways contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street-level pedestrian walkway [28 CFR §35.151(e)(1)]. In addition, newly constructed or altered street-level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways [28 CFR §35.151(e)(2)].

## **Alterations to Historic Properties**

Title II also provides that alterations to historic properties must comply, to the maximum extent feasible, with the special access provisions for historic properties established by section 4.1.7 of UFAS or section 4.1.7 of ADAAG [28 C.F.R. §35.151(d)(1)]. Under those provisions, alterations should be done in full compliance with the alterations standards for other types of buildings. However, if following the usual standards would threaten or destroy the historic significance of a feature of the building, alternative standards may be used.

The decision to use alternative standards for a particular feature must be made in consultation with the appropriate historic advisory board designated in ADAAG or UFAS, and interested persons should be invited to participate in the decision-making process.

## **MAINTENANCE OF ACCESSIBLE FEATURES**

Under the Title II regulation, public entities must maintain in working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities under the ADA [28 CFR §35.133(a)]. Inoperable elevators, locked accessible doors, or "accessible"

### **28 CFR §35.133**

#### **Maintenance of accessible features.**

(a) A Public accommodation shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.

routes that are obstructed by furniture, filing cabinets, or potted plants are neither "accessible to" nor "usable by" individuals with disabilities [28 CFR §35.133 (Preamble)].

It should be noted that the Title II requirement regarding the maintenance of accessible features does not prohibit temporary obstructions or isolated instances of mechanical failure [28 CFR §35.133(b) (Preamble)]. Isolated or temporary interruptions in service or access due to maintenance or repairs are also not prohibited [28 CFR §35.133(b)]. However, allowing obstructions or "out of service" equipment to persist beyond a reasonable period of time would violate this requirement, as would repeated mechanical failures due to improper or inadequate maintenance [28 CFR §35.133 (Preamble)].

## **IMPLEMENTING THE REVIEW OF PROGRAM AND FACILITY ACCESS**

Title II prohibits public entities from excluding people with disabilities from programs, services, or activities because of inaccessible facilities. In order to ensure program accessibility, it is recommended that each One-Stop conduct a program and facility access review. The findings of this review will form the basis for identifying nonstructural and structural changes needed to ensure program accessibility.

The recommended approach to conducting the program and facility access review begins with a review of programs, to evaluate the scheduling and space requirements of each program. If access teams have been thorough through previous tasks, this information will already be at hand from Resources 3-3 and 3-4. Next, all existing facilities in which the One-Stop System operates programs are surveyed to identify the physical obstacles or barriers to the participation of people with disabilities. Findings from the program review are used in conjunction with the assessment of facilities to identify barriers to program participation.

The access team then identifies nonstructural and structural solutions for the removal of barriers and determines the best resolution of program access barriers in each situation. Both nonstructural and structural solutions to physical access problems must be implemented immediately.

An overview of this process is depicted on the flowchart on the following page. Each of these steps is discussed below.

Resources designed to be utilized as part of the self-assessment process are also discussed.

Though federal regulations do not require a specific approach to the program accessibility self-assessment that is described in this Guide, the strategy suggested here is a proven, practical approach to carrying out the steps necessary for most One-Stop systems to achieve compliance.

Overview of the Program and Facility Access Review	
<i>Listed below are steps of a program and facilities access review:</i>	
<b>1. Preparation</b>	<b>3. Analysis</b>
Review or complete list of One-Stop programs and partners from Resource 3-3	Identify nonstructural and structural solutions
Compile list of facilities used for programs from Resource 3-4	Project long-term and short-term costs
Orient facilities self-assessment team to ADAAG and Resources 6-1 and 6-2	Document fundamental alteration/undue burden decisions
Identify programs and spaces to be surveyed	
Complete facility review plan, including time frames.	<b>4. Planning</b>
	Prepare a barrier removal plan
<b>2. Facilities Review</b>	Solicit comments
Identify barriers in existing buildings	Adopt and implement the final plan

## Prepare to Conduct the Review

The following planning steps will help One-Stop Centers prepare to conduct a program accessibility self-assessment and develop an action plan:

- Review or complete list of One-Stop programs and partners from Resource 3-3
- Compile list of facilities used for programs from Resource 3-4

- Orient facilities self-assessment team to ADAAG and Resources 6-1 and 6-2
- Identify programs to be surveyed
- Identify spaces to be surveyed
- Complete facility review plan, including time frames.

Each of these steps will now be discussed in more detail.

**1. Review or complete list of One-Stop programs and partners from Resource 3-3.** During the first phase of the self-assessment process, an access team should have compiled a listing of all of the programs that are operated by recipients and sub-recipients within a One-Stop network. The team should review that list to make certain that it has been inclusive of all of the covered programs and activities of the local One-Stop system.

**2. Compile the list of facilities used for programs and activities from Resource 3-4.** Once again, this information should already be at hand from the first phase of the self-assessment process. Access teams should review the information that they have received and follow-up on partners, sub-recipients, or providers to secure any missing data or information about facilities that are used in connection with WIA Title I-funded programs and activities. A composite list of the facilities that must be assessed should be compiled.

**3. Orient facilities assessment team to ADAAG and Resources 6-1 and 6-2.** The resources provided for the facility self-assessment are extensive and comprehensive. Resource 6-1 allows for listing programs, their requirements for space, and the buildings and locations where they are conducted. Resource 6-1 includes the ADAAG standards for ensuring access to all sorts of facility features, from meeting rooms to elevators to curb cuts from the parking lot. Team members should review the types of features that they will assess. In all cases, the process of examining a facility or some feature within a facility is fairly simple. The standards are indicated on the resources and there are blocks to check for compliance or to note any aspects of non-compliance.

**4. Identify programs and spaces to be surveyed.** Since the goal of the review process is to ensure access to all One-Stop programs rather than merely to all facilities, it is necessary to gather additional information on programs as well as facilities. In order to plan such nonstructural approaches to program accessibility as the reassignment or

relocation of programs, the Access Team will need to know the following information:

- a. The current building(s) and location within the building(s) of each program.** Facility access information will not be useful without an understanding of how physical features affect program access. It is important to gather this information for each program conducted by each contractor or provider who might be funded through the One-Stop. This may require inventory of classrooms at a local school or community college or other commercial space that is utilized for One-Stop programs.
- b. Program scheduling requirements.** Patterns of usage are of great importance in developing accessibility solutions. For example, a program that uses an accessible facility on a limited basis may be able to share the use of the space with another program. Such a solution may be more cost-effective than making structural alterations to a second facility.
- c. Program space requirements.** How much space does each existing program actually need and what kind of space is required? Information about the space requirements of programs is critical as options for providing program accessibility are considered.

Resource 6-1 may be used to record information about the scheduling and space requirements of programs and the current locations of programs.

**5. Identify the spaces to be surveyed.** Facilities that should be included in the facility access review must be identified. The facility access survey is most efficiently conducted by looking at all facilities and their uses simultaneously. A coordinated facility access review and program review can more efficiently result in program accessibility by providing the information to enable problem solving across program lines.

All facilities that contain programs operated by or for a One-Stop Center must be reviewed. This includes buildings owned or leased by the Center, as well as outdoor areas, walkways, parking areas and any other facilities used in the operation of programs. This information should be complete from previous steps 2 and 4.

**6. Complete facility review plan, including time frames.** It has been assumed throughout this Guide that most One-Stop operations will be assessed by a single access team surveying program policies and practices, employment practices, facilities, and communications. Some One-Stop systems may so large as to require subgroups or separate teams to examine the various elements of recipients' programs. When completing the plan for program and facility self-assessment the access team will assign its members various facilities or various parts of the facility assessment; or, it may assign an entire facilities group to complete the survey, and report the data on Resource 6-2. The team should develop a firm plan, including specific assignments, and dates by which surveys should be complete and reports returned to the access team.

Obviously, a Workforce Investment Area with significant resources and expertise will be able to conduct a more detailed and comprehensive facility review than one with fewer resources. Entities with more limited resources can use a comparatively "low-tech" approach - handwritten survey forms instead of computerized data bases and more limited staff involvement--and still accomplish the same objectives. Whichever approach is chosen, the facility access review should be managed by the Access Team or sub-task group.

### **Conduct the Facility Access Review**

The access team should have the following items available when undertaking site reviews:

- a copy of the site plan showing where public programs are located;
- collated forms for each building;
- measurement guides;
- clipboards;
- pens or pencils (writing must photocopy clearly);
- measuring tape;
- a regular or digital level for measuring the degree of the slope on ramps and other slope surfaces (a hand level is especially useful for long exterior slopes);
- chalk for marking distances on surfaces;
- a fisherman's scale or other device to measure the pressure required to open doors;
- a watch;
- a camera; and
- graph paper.

The facility access review team will identify barriers in each building surveyed. The team may also note solutions to barriers based on their review of buildings.

Although the Facility Checklist that is presented in Worksheet 6-2 is based on ADAAG, it is not designed for a comprehensive evaluation of compliance with ADAAG's complete technical requirements. Rather, the survey questions that appear on the Checklist are designed to ensure that functional access is provided for persons with disabilities to most facilities. Also, some items on the Checklist require users to refer to ADAAG for particular specifications. Users of the Checklist should consult the ADAAG requirements themselves, independent of their use of this Checklist.

Although the appropriate standard for existing facilities is **program accessibility** rather than full compliance with facility standards such as ADAAG, the ADAAG standards do provide useful guidance for identifying architectural barriers. However, it is important to note that the ADAAG standards do not establish the minimum requirements for providing program access, and failure to comply with the ADAAG standards does not necessarily indicate a violation of Title II or Section 504 and does not necessarily require any corrective action. Rather, for existing facilities under Title II and Section 504, ***the real question is whether the covered entity's programs and activities, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities.***

***Resource 6-2, the Facility Checklist, is a modular survey tool that can be used to identify architectural barriers, as well as communication barriers, that are structural in nature and limit program access. As noted above, other survey instruments may also be used, such as the more exhaustive ADAAG Checklist.***

## **Analyze Program Access Options**

After the facility access review has been conducted and barriers have been identified at each program site, the Access Team is ready to assess findings. The team ensures that information is summarized to facilitate analysis. Summaries indicate where substantial physical barriers intersect with program operations to create barriers to access and use.



Next, team members identify potential structural and nonstructural solutions for program barriers, evaluating proposed solutions in terms of their relative cost and effectiveness in providing access. This requires a team effort, especially when programs are conducted in multiple facilities. All key persons should be involved as solutions are sought in order to avoid implementation barriers later.

Steps that must be accomplished include:

- identifying nonstructural and structural solutions,
- projecting long-term and short-term costs, and
- documenting fundamental alteration/undue burden decisions

**1. Identify nonstructural and structural solutions.** Where the program and facility access review identify programs and facilities as inaccessible, the recipient or other responsible entity must take steps to make the programs accessible. Bear in mind that Congress did not intend that public entities expend large sums of money to retrofit buildings and facilities where other effective means of achieving equal opportunity to participate are available. If they can create program accessibility, nonstructural methods are equally acceptable and should be considered before structural changes. The Department of Justice and the Department of Labor encourage innovation and creativity in eliminating barriers--as long as the means used provide people with disabilities equal opportunity to participate in and benefit from the Workforce Investment Act programs.

For each program or service identified as inaccessible, the access team should create a list of the possible solutions to afford program access, such as the following:

- reassigning programs, activities and services within the facility,
- reassigning programs, activities and services to another facility,
- redesigning or relocating equipment,
- providing or assigning human aides,
- altering facilities,
- constructing new facilities, or
- other options.

The team should develop a list of criteria to help members compare and choose among options. Some of the criteria that are important to consider include:

- **Integration.** Integration is a fundamental principle of federal disability regulations. Priority should be given to methods supporting the integration of people with disabilities into programs and activities that provide interaction with people who do not have disabilities.
- **Preferences.** As discussed throughout this Guide, listening to and incorporating the ideas and concerns of people with disabilities is very important to creating successful programmatic and structural access solutions.
- **Capital planning information.** As the team develops recommended solutions, it should seek to obtain information regarding planned alterations, the planned closing of a facility, or other plans for each facility. Information regarding available land, planned new construction, and vacant or under-utilized facilities is also helpful in developing accessibility options.

**2. Project long-term and short-term costs.** As desired options are analyzed, the team should consider both the short- and long-term costs of each option as well as the sources of funds. The recipient may have funds available for operations but not for capital improvements or vice versa. Existing capital or alteration plans should be considered in estimating costs. Making structural changes may be less difficult than anticipated when considered in the context of capital or alteration plans that are already scheduled or in process. Some structural solutions may be small in scale and able to be accomplished through operations budgets.

**3. Document fundamental alteration/undue burden decisions.** If there are any situations in which barriers will not ever be removed because to do so would constitute a fundamental alteration in the nature of the program, service, or activity, or impose undue financial or administrative burdens--justification must be documented. ***The fundamental alteration/undue burden determination must be made by the head of the public entity or his or her designee*** [28 CFR §35.150(a)(3)].

## **Develop an Action Plan**

The development of an action plan may occur in a three-step sequence:

- Prepare a draft action plan.
- Solicit comments on the draft action plan.
- Adopt and implement the final action plan.

**1. Prepare a barrier removal plan.** A draft Action Plan should be prepared that proposes remedy for each of the situations of inaccessibility that were documented in the survey. The draft should be circulated for review and comment to individuals from a broad range of perspectives.

An important component of the action plan is the timetable for structural modifications. Longer-term recipients and operators may have had experience with the “transition period” allowed under Title II of the ADA. That was a decade ago, and the assumption is that entities have lived with nondiscrimination regulations long enough to be in compliance. There is no similar allowance of a transition period or window under Section 188. Recipients must make plans to swiftly comply with accessibility standards so as to avoid violations that could lead to CRC inquiry or sanctions.

**2. Solicit comments on the draft action plan.** Interested persons, including individuals with disabilities or organizations representing individuals with disabilities, must be given an opportunity to comment on the proposed plan. Many times, a public meeting is an effective way of providing people with disabilities, organizations representing individuals with disabilities, and other interested parties an opportunity to comment on and discuss the action plan. An actively involved advisory group comprised of individuals with disabilities is another way to get participation in the development of the action plan.

**3. Adopt and implement final plan.** To complete the action plan, revise the draft as necessary in response to comments, attach a copy of Resource 6-2 and any other supporting documentation as appendices, secure approval as necessary within the LWIA, and have the official responsible for implementation sign the final action plan. The approved plan should be put into effect immediately. Be sure to clarify who is responsible for monitoring the plan as it is implemented and ensuring that deadlines are met.

### Resource 6-1: Program Inventory

**Record information on all programs offered by the One-Stop Center. Identify all special scheduling and space requirements under "Description."**

[illegible]

## Resource 6-2: Facility Checklist

### PARKING

<b>General Area/Building:</b>				<b>Reviewer:</b>	<b>Date:</b>
<b>Questions</b>	<b>In Compliance?</b> Y      N      NA			<b>Dimensions/ Comments</b>	<b>ADAAG</b>
Is there an adequate number of accessible parking spaces available?					4.1.2(5)(a); 4.6.1.
For guidance in determining the appropriate number of accessible space to provide, the table below gives the ADAAG requirements for new construction and alterations (for lots with more than 100 space, refer to ADAAG 4.1.2(5)(a)):				Total spaces: 1 to 25 26 to 50 51 to 75 76 to 100	Accessible: 1 space 2 spaces 3 spaces 4 spaces
Are accessible parking spaces at least 8 feet wide, with a 5-foot access aisle (two spaces can share an access aisle)?					4.6.3; 4.1.2(5)(a)
Is one in every 8 spaces, but at least one, van-accessible with a 96-inch wide access aisle, and 98 inches of vertical clearance?					4.1.2(5)(b); 4.6.5
Are the access aisle part of the accessible route to an accessible entrance?					4.6.3; 4.3
Are the accessible spaces the ones closest to an accessible entrance?					4.6.2
Is the slope of the accessible parking area and access aisle no more than 1:50?					4.6.3
Are accessible spaces marked with a vertical sign showing the international symbol of accessibility? In addition, are there signs reading "Van Accessible" at van spaces?					4.6.4; 4.30.7

### PASSENGER LOADING ZONES

Is there an access aisle 60 inches wide by 20 feet long adjacent and parallel to the vehicle pull-up space?					4.1.2(5)(c); 4.6.6.
Is the slope of the access aisle and the pull-up space no more than 1:50?					4.6.6
If there is a curb between the access aisle and the vehicle pull-up space, is there a curb ramp?					4.6.6; 4.7
If a walkway crosses or adjoins the driveway and there is no curb, does the walkway edge have a detectable warning surface?					4.29.5
Is there at least 114 inches of vertical clearance provided to the accessible passenger loading zones and along at least one vehicle access route to it?					4.6.5
Is there a sign displaying the international symbol of accessibility at the accessible loading zone?					4.1.2(7)(b)

## Resource 6-2: Facility Checklist

### EXTERIOR ROUTE OF TRAVEL

<b>General Area/Building:</b>				<b>Reviewer:</b>	<b>Date:</b>
Questions	In Compliance?			Dimensions/ Comments	ADAAG
Y	N	NA			
Is there at least one accessible route of travel from public transportation stops, accessible parking spaces, accessible passenger loading zones, public streets, and sidewalks to the accessible entrance?					4.1.2(1); 4.3.2(1)
Is there at least one accessible route that connects accessible buildings, facilities, elements, and spaces that are on the same site?					4.1.2(2); 4.3.2(2)
Is the accessible route(s) stable, firm and slip-resistant?					4.3.6; 4.5.1
Is the accessible route at least 36 inches wide?					4.3.3
If the accessible route(s) is less than 60 inches wide, are there passing spaces at least 60 inches by 60 inches, or T-intersections of corridors, located at reasonable intervals but not more than 200 feet apart?					4.3.4, Fig. 3
Is there at least 80 inches of clear head room on every route? If an area adjoining an accessible route has less than 80 inches of clear head room, is a barrier to warn persons with visual impairments provided?					4.3.5; 4.4.2, Fig. 8
Are all obstacles along routes of travel cane-detectable (located within 27 inches of the ground or higher than 80 inches, or protruding no more than 4 inches into the route of travel)?					4.4.1, Fig. 8
If gratings are located in walking surfaces, are the openings of the grating no greater than 1/2 inch wide in one direction? Are the long dimensions of rectangular openings placed perpendicular to the dominant direction of travel?					4.5.4
Is the cross-slope of the accessible route(s) no greater than 1:50?					4.3.7
Is the running slope of the accessible route no greater than 1:20, or is there an accessible ramp if the slope is greater than 1:20 (use ramp survey)?					4.3.7
Are walkway level changes no more than 1/4 inch, or if they are between 1/4 inch and 1/2 inch, are they beveled with a slope no greater than 1:2?					4.3.8; 4.5.2
Are there curb cuts, ramps, platform lifts, or elevators where there is a change in level greater than 1/2 inch?					4.3.8; 4.5.2
Is there a curb cut wherever an accessible route crosses a curb?					4.7.1
Is the slope of the curb ramp no greater than 1:12? If there is not enough space to use a 1:12 slope or less, is the slope of the curb ramp no greater than 1:10 for a maximum rise of 6 inches, or 1:8 for a maximum rise of 3 inches?					4.7.2; 4.1.6(3)(a)

## Resource 6-2: Facility Checklist

### EXTERIOR ROUTE OF TRAVEL, cont.

<b>General Area/Building:</b>				<b>Reviewer:</b>	<b>Date:</b>
Questions	In Compliance?			Dimensions/ Comments	ADAAG
Are maximum slopes of adjoining gutters, immediately adjacent road surface, or accessible route no greater than 1:20? Is the transition from the curb ramp to adjoining surfaces flush and free of abrupt changes?					4.72
If a curb ramp is located where pedestrians must walk across the ramp, or where it is not protected by handrails or guardrails, does it have flared sides with a maximum slope 1:10?					4.7.5
Is the width of the curb ramp, not including the flared sides, no less than 36 inches?					4.7.3
Is the surface of the curb ramp stable, firm and slip-resistant?					4.5.1; 4.7.4
<b>RAMPS</b>					
Are the slopes of ramps no greater than 1:12?					4.8.2
Is the rise of each ramp run (vertical distance between landings) no greater than 30 inches?					4.8.2
Is the cross slope no greater than 1:50?					4.8.6
Do all ramps longer than 6 feet or with more than 6 inches rise, have railings on both sides?					4.8.5
Are railings continuous, sturdy, and between 34 and 38 inches high?					4.8.5
Is the width between railings and curbs at least 36 inches?					4.8.3
Are ramps stable, firm, and slip-resistant?					4.8.6; 4.5.1
Is there a 5-foot-long level landing at every 30-foot horizontal length of ramp, at the top and bottom of every ramp and where the ramp changes direction?					4.8.4
Do ramps and landings with drop-offs have walls, railings, projecting surfaces, or curbs at least two inches high to prevent people from slipping off the ramp?					4.8.7

## Resource 6-2: Facility Checklist

### STAIRS

<b>General Area/Building:</b>				<b>Reviewer:</b>	<b>Date:</b>
<b>Questions</b>	<b>In Compliance?</b> Y      N      NA			<b>Dimensions/ Comments</b>	<b>ADAAG</b>
Do stairs have closed risers?					4.9.2
Are stair treads no less than 11 inches?					4.9.2
Do stairs have continuous handrails on both sides, with extensions beyond the top and bottom stairs?					4.9.4
Do nosings project no more than 1-1/2 inches?					4.9.3

### LIFTS

If platform lifts are used, can a person using a wheelchair enter, operate, and exit the lift without assistance?					4.11.3
Is the platform lift at least 30 by 48 inches?					4.11.2; 4.2.4
Is there at least 30 by 48 inches of clear space for a person using a wheelchair to approach to reach the controls and use the lift?					4.11.2; 4.2.4
If there is a door on the lift, is the door accessible?					4.13
Are controls between 15 and 48 inches high (up to 54 inches if a side approach is possible)?					4.11.2; 4.2.5; 4.2.6
Are the controls operable with one hand, and without tight grasping, pinching, or twisting of the wrist?					4.11.2; 4.27.4



## Resource 6-2: Facility Checklist

### ENTRANCES

<b>General Area/Building:</b>				<b>Reviewer:</b>	<b>Date:</b>
Questions	In Compliance? Y      N      NA			Dimensions/ Comments	ADAAG
Are at least 50% of all public entrances accessible? Is at least one accessible entrance a ground floor entrance?					4.1.3(8)(a)(1)
Do all inaccessible entrances have signs indicating the location of the nearest accessible entrance?					4.1.3(8)(d); 4.30
If not all entrances are accessible, are the accessible entrances identified by the international symbol of accessibility?					4.1.2(7)(c); 4.30
Does at least one door at each accessible entrance have at least 32 inches clear opening (for a double door, at least one 32-inch leaf)?					4.1.3(7)(a); 4.13.4; 4.13.5
Are appropriate maneuvering clearances provided at accessible doors?					4.13.6, Fig. 25
Is the threshold level (less than 1/4 inch high) or beveled with a slope no greater than 1:2 up to 1/2 inch high (3/4" maximum for exterior sliding doors)?					4.13.8
Are door handles at accessible entrances no higher than 48 inches and operable with one hand and without tight grasping, pinching or twisting of the wrist?					4.13.9
If there is a revolving door or turnstile at an entrance, is there an accessible door or gate next to it?					4.13.2
On sliding doors, is the operating hardware exposed and usable from both sides when the doors are fully open?					4.13.9
Can accessible doors be opened without too much force (maximum of 5 lbf for interior doors)?					4.13.11
If the accessible doors have closers, do they take at least 3 seconds to close to a point 3 inches from the latch?					4.13.10

## Resource 6-2: Facility Checklist

### LOBBIES AND CORRIDORS

<b>General Area/Building:</b>				<b>Reviewer:</b>	<b>Date:</b>
Questions	Compliance? Y    N    NA			Dimensions/ Comments	ADAAG
Does the accessible entrance connect with all accessible elements and spaces in the building?					4.1.3(1); 4.3.2(3)
Is the accessible route to all public spaces at least 36 inches wide? If the accessible route turns around an obstruction less than 48 inches wide, is the route at least 42 inches wide on the approach to and exit from the turn at least 48 inches wide at the base of the turn?					4.3.3, Fig. 7
Is the cross-slope of the accessible route no steeper than 1:50?					4.3.7
If the accessible route is less than 5 feet wide, are there passing spaces 5 feet by 5 feet or T-intersecting corridors located at reasonable intervals no more than 200 feet apart?					4.3.4; Fig. 3
Is there at least 80 inches of clear head room on every route? If an area adjoining an accessible route has less than 80 inches of clear head room, is a barrier to warn persons with visual impairments provided?					4.3.5, 4.4.2, Fig. 8
Are floors on an accessible route stable, firm, and slip-resistant?					4.5.1
Is the slope no more than 1:20, or is there a ramp when the slope is greater than 1:20?					4.3.7
If objects mounted to the wall have leading edges between 27 and 80 inches from the floor, do they project no more than 4 inches into the route of travel?					4.4.1
Are walkway level changes less than 1/4 inch, or, if they are between 1/4 inch and 1/2 inch, are they beveled with a slope no greater than 1:2?					4.3.8, 4.5.2
Are ramps provided for changes in level greater than 1/2 inch?					4.5.2
Does at least one door into each public space have at least a 32-inch clear opening?					4.1.3(7)(b), 4.13.5
Are appropriate maneuvering clearances provided at accessible doors?					4.13.6, Fig. 25
Can doors be opened without too much force (5 lbf maximum for interior doors)?					4.13.11
Are door handles 48 inches high or less and operable without tight grasping, pinching, or twisting of the wrist?					4.13.9
Are all thresholds level (less than 1/4 inch), or beveled with a slope no greater than 1:2, up to 1/2 inch high?					4.13.8
Do signs which provide direction to, or information about, functional spaces of the building, comply with the appropriate requirements for directional signage?					4.1.3(16)(b); 4.30

## Resource 6-2: Facility Checklist

### LOBBIES AND CORRIDORS, cont.

<b>General Area/Building:</b>				<b>Reviewer:</b>	<b>Date:</b>
Questions	Compliance? Y   N   NA			Dimensions/ Comments	ADAAG
Do signs designating rooms and spaces, such as rest rooms, signs at exit doors, and room numbers, comply with the appropriate requirements for tactile signage? Do all signs meet legibility requirements regarding contrast and character proportion?					4.1.3(16)(a), 4.30
Do alarms have both visible and audible signals?					4.1.3(14), 4.28
<b>ELEVATORS</b>					
Does the elevator have automatic operation and self-leveling features?					4.10.2
Are there both visible and verbal or audible door opening/closing and floor indicators (one tone = up, two tones = down)?					4.10.4
Are the call buttons in the hallway at least 3/4 inches wide and centered at 42 inches?					4.10.3.
Do hall call buttons have visual signals to indicate when each call is registered and answered?					4.10.3
Is there a sign on the jamb at each floor identifying the floor in raised and Braille letters?					4.10.5, 4.30.4
Is the door opening at least 36 inches wide?					4.10.9
For a centered opening, is the minimum inside dimension of elevator cars 51 inches by 80 inches?					4.10.9
For an off-center opening, is the minimum inside dimension of elevator cars 51 inches by 68 inches?					4.10.9
Are car control buttons no higher than 48 inches for forward reach and 54 inches for side reach?					4.10.12(3)
Do the controls inside the cab have raised and Braille lettering?					4.10.12(2), 4.30.4
Are the emergency controls grouped at the bottom of the control panel and centered no less than 35 inches above the floor?					4.10.12(3)
If an emergency intercom is provided, is it usable without voice communication?					4.10.14
Is the emergency intercom identified in Braille and raised letters and a raised symbol?					4.10.14, 4.30.4
If the communication system is in a closed compartment, is the hardware on the compartment operable without tight grasping, pinching, or twisting of the wrist?					4.10.14

## Resource 6-2: Facility Checklist

### ROOMS AND SPACES

<i>General Area/Building:</i>				<i>Reviewer:</i>	<i>Date:</i>
Questions	Compliance?	Y	N	NA	Dimensions Comments ADAAG
Are all aisles and pathways to materials and services at least 36 inches wide?					4.3.3
If aisles between fixed furniture are less than 5 feet wide, are there passing spaces 5 feet by 5 feet or intersecting aisles at reasonable intervals not exceeding 200 feet maximum?					4.3.4
Are floors stable, firm, and slip-resistant?					4.5.1
Is carpeting low-pile, tightly woven, and securely attached?					4.5.3.
In routes through public areas, are all obstacles cane-detectable (located within 27 inches of the floor or higher than 80 inches, or protruding no more than 4 inches from the wall)?					4.4.1, Fig. 8
Is there at least 80 inches of clear head room on every route? If an area adjoining an accessible route has less than 80 inches of clear head room, is a barrier to warn persons with visual impairments provided?					4.3.5, 4.4.2, Fig. 8
Does at least one door into each public space have at least a 32-inch clear opening?					4.13.5, 4.1.3(7)(b)
Are appropriate maneuvering clearances provided at accessible doors?					4.13.6, Fig. 25
Can doors be opened without too much force (5 lbf maximum for interior doors)?					4.13.11
Are door handles 48 inches high or less and operable without tight grasping, pinching or twisting of the wrist?					4.13.9
Are all thresholds level (less than 1/4 inch), or beveled, with a slope no greater than 1:2 up to 1/2 inch high?					4.13.8
If there are sliding doors, is the operating hardware exposed and usable from both sides when the doors are fully open?					4.13.9
Do signs designating permanent rooms and spaces (rest room signs, signs at exit doors, and room numbers) comply with the appropriate requirements for signage? Do all signs meet legibility requirements regarding contrast and character proportion?					4.1.3(16)(a), 4.30
Do signs which provide direction to, or information about, functional spaces of the building comply with the appropriate requirements for directional signage?					4.1.3(16)(b), 4.30
Are all controls that are available for use by the public (including electrical, mechanical, cabinet, game, and self-service controls) located between 15 and 48 inches for forward reach and between 9 and 54 inches for side reach?					4.2.5, 4.2.6
Are they operable without tight grasping, pinching, or twisting of the wrist?					4.27.4
Do alarms have both visible and audible signals?					4.1.3(14), 4.28

If fixed or built-in seating or tables are provided in accessible public or common use areas, do at least 5%, but not less than one, of the fixed or built-in seating areas or tables provide 30 inches by 48 inches of clear floor space?					4.1.3(18), 4.32.2
Are the aisles between fixed seating at least 36 inches wide?					4.3.3
Are the tops of at least 5% of fixed tables or counters between 28 and 34 inches high?					4.32.4
Are knee spaces at accessible fixed tables at least 27 inches high, 30 inches wide, and 19 inches deep?					4.32.3
Are at least 50% of drinking fountains, but at least one, on each floor accessible?					4.1.3(10), 4.15
Do the accessible wall- and post-mounted cantilevered units have clear knee space 27 inches high, 30 inches wide and 17 to 19 inches deep? Do these units have a minimum clear floor space 30 inches by 48 inches to allow a person who uses a wheelchair to approach the unit facing forward?					4.15.5(1)
Do the accessible free-standing or built-in drinking fountains not having clear space under them have clear floor space of at least 30 by 48 inches in front to allow a parallel approach to the unit?					4.15.5(2)
Do accessible drinking fountains have spouts no higher than 36"					4.15.2
Are controls on accessible drinking fountains mounted on the front or on the side near the front edge, and operable without tight grasping, pinching, or twisting of the wrist?					4.15.4, 4.27.4
If pay or public-use phones are provided, is there clear floor space of at least 30 by 48 inches in front of at least one in each bank, that allows a parallel or perpendicular approach by a person using a wheelchair?					4.13(17)(a), 4.31.2
Are the operable parts of the accessible phone(s) 15 to 48 inches high (9 to 54 inches if a side approach is possible)?					4.31.3, 4.2.5, 4.2.6
Do the accessible phones have push-button controls?					4.31.6
Are the accessible phones hearing-aid compatible?					4.31.5(1)
Are the accessible phones adapted with volume control? In addition, do 25%, but not less than one, of all other public phones have volume control?					4.1.3(17)(b), 4.31.5(2)
Are the accessible phones and all the phones with volume control identified with appropriate signage?					4.1.3(17)(b), 4.30
If there are four or more public phones in the building, is one of the phones equipped with a text telephone (TT or TDD)?					4.1.3(17)(c)
Is the location of the text telephone identified by accessible signage bearing the international TDD symbol?					4.30.7(3)
When a bank of telephones has 3 or more public pay phones, is at least one public pay phone equipped with a shelf and outlet?					4.1.3(17), 4.31.9(2)
Do all banks of telephones that do not contain a text telephone have appropriate directional signage placed adjacent to them indicating the location of the text telephone? If the facility has no banks of telephones, is there appropriate directional signage provided at the entrance?					4.30.7(3)

## Resource 6-2: Facility Checklist

### TOILET ROOMS

<b>General Area/Building:</b>				<b>Reviewer:</b>	<b>Date:</b>
Questions	Compliance? Y    N    NA			Dimensions/ Comments	ADAAG
If rest rooms are available to the public, is at least one rest room on each floor that has public rest rooms (either one for each sex, or unisex) on an accessible route and fully accessible?					4.1.2(6), 4.1.3(11), 4.1.6(3)(e), 4.22, Fig. 30
Are there signs at inaccessible rest rooms that give directions to accessible ones?					4.1.6(3)(e)(iii), 4.30
When not all toilet facilities are accessible, are accessible toilet rooms identified by the international symbol of accessibility?					4.1.2(7)(d)
Do doors have at least a 32-inch clear opening?					4.22.2
Are appropriate maneuvering clearances provided at doors?					4.13.6, Fig. 25
Can doors be opened without too much force (5 lbf maximum for interior doors)?					4.13.11
Are door handles 48 inches high or less and operable without tight grasping, pinching, or twisting of the wrist?					4.13.9
Are all thresholds level (less than 1/4 inch), or beveled, with a slope no greater than 1:2 up to 1/2 inch high?					4.13.8
If there are sliding doors, is the operating hardware exposed and usable from both sides when the doors are fully open?					4.13.9
Is there tactile signage identifying the rest rooms, placed on the wall at the latch side of the door, centered 60 inches above the floor?					4.1.3(16)(a), 4.30
Is there a 5-foot diameter clear space or a T-shaped space in the rest room to make turns?					4.22.3
Are all fixtures on an accessible route?					4.22.7, 4.27
Is there at least one wheelchair-accessible stall that is at least 5 feet wide, clear of the door swing, and at least 56 inches long if the toilet is wall-mounted or 59 inches long if the toilet is floor-mounted? If it is technically infeasible to provide such a standard stall, is there a stall that is either 36 by 66 inches or 48 by 66 inches if the toilet is wall-mounted or either 36 by 69 inches if the toilet is floor-mounted?					4.17.3, 4.22, Fig. 30
Can the door to the accessible toilet stall be operated without twisting or fine movement, on both the inside and outside?					4.17.5, 4.13.9
Do the accessible toilet stalls have a minimum door opening of at least 32 inches?					4.17.5, 4.13.5
Are there accessible grab bars in accessible toilet stalls?					4.17.6, 4.26, Fig. 30
Are there accessible grab bars at accessible water closets not located in stalls?					4.16.4, 4.26, Fig. 29

## Resource 6-2: Facility Checklist

### TOILET ROOMS, cont.

<b>General Area/Building:</b>				<b>Reviewer:</b>	<b>Date:</b>
Questions	Compliance? Y   N   NA			Dimensions/ Comments	ADAAG
Are the accessible toilet seats 17 to 19 inches high?					4.16.3
Are the flush controls on accessible toilets no higher than inches and mounted on the wide side of toilet areas?					4.16.5
Is the toilet paper dispenser at least 19 inches above the floor?					4.16.6
Does one lavatory have a 30-inch-wide by 48-inch-deep clear space in front, with a maximum of 19 inches of that depth under the lavatory?					4.19.3
Is the lavatory rim no higher than 34 inches from the floor?					4.19.2
Is there at least 29 inches from the floor to the bottom of the lavatory apron?					4.19.2
Is there at least 8 inches of clearance toward the wall provided for knee clearance?					4.19.2, Fig. 31
Is there a maximum of 6 inches of clearance outward from the wall provided for toe clearance?					4.19.2, Fig. 31
Can the faucet be operated with one hand and without tight grasping, pinching, or twisting of the wrist?					4.19.5
Are hot water pipes and drain pipes insulated, or configured to avoid contact with the legs of a person using a wheelchair?					4.19.4
Are soap and other dispensers and hand dryers no higher than 48 inches for forward reach or 54 inches for side reach?					4.27.3
Can they be operated with one hand and without twisting or fine movement?					4.27.4
Is there a clear floor space of 30 by 48 inches in front of the dispensers?					4.27.2
Is the mirror mounted with the bottom edge of the reflecting surface no higher than 40 inches?					4.19.6
If alarms are provided in the rest room, do they have both visual and audible signals?					4.1.3(14), 4.28

## Resource 6-2: Facility Checklist

### SHOWER ROOMS

<b>General Area/Building:</b>				<b>Reviewer:</b>	<b>Date:</b>
Questions	Compliance? Y    N    NA			Dimensions Comments	ADAAG
Are shower rooms on an accessible route and fully accessible?					4.1.3(11), 4.23.1
When not all shower rooms are accessible, are accessible shower rooms identified by the international symbol of accessibility?					4.1.2(7)(d)
Do doors have at least a 32-inch clear opening?					4.23.2, 4.13.5
Are appropriate maneuvering clearances provided at doors?					4.23.2; 4.13.6, Fig. 25
Can doors be opened without too much force (5 lbf maximum for interior doors)?					4.23.2, 4.13.11
Are door handles 48 inches high or less and operable with one hand and without tight grasping, pinching, or twisting of the wrist?					4.23.2, 4.13.9
Are all thresholds level (less than 1/4 inch), or beveled, with a slope no greater than 1:2 up to 1/2 inch high?					4.23.2, 4.13.8
If there are sliding doors, is the operating hardware exposed and usable from both sides when the doors are fully open?					4.23.2, 4.13.9
Is there tactile signage identifying the shower rooms, placed on the wall at the latch side of the door, centered 60 inches above the floor?					4.1.3(16)(a), 4.30
Is there a 5-foot diameter clear space or a T-shaped space in the rest room to make turns?					4.23.3
If a standard shower stall is provided, is it at least 36 inches by 36 inches?					4.21.2, Fig. 35
If a roll-in shower stall is provided, is it at least 30" x 60"?					4.21.2, Fig. 35
Is appropriate clear floor space provided at shower stalls?					4.21.2, Fig. 35
Is a seat provided in shower stalls 36 inches by 36 inches? Is it mounted between 17 and 19 inches above the shower floor on the wall opposite the controls and does it extend the full depth of the stall?					4.21.3, 4.26.3
Where a fixed seat is provided in a 30 by 60 inch minimum shower stall, is it a folding type and is it mounted on the wall adjacent to the controls?					4.21.3, 4.26
Are accessible grab bars provided in accessible shower stalls?					4.21.4, Fig. 37
Are accessible faucets and other controls that are operable with one hand and without tight grasping, pinching, or twisting of the wrist provided in accessible shower stalls?					4.21.5, 4.27.4, Fig. 37
If provided, are curbs in shower stalls 36 inches by 36 inches no higher than 1/2 inch?					4.21.7
If a 30 by 60 inch shower stall is provided, does it have no curb?					4.21.7



## Resource 6-2: Facility Checklist

### ASSEMBLY AREAS

<b>General Area/Building:</b>				<b>Reviewer:</b>	<b>Date:</b>
Questions	Compliance?			Dimensions Comments	ADAAG
Y	N	NA			
Does at least one door into each public space have at least a 32-inch clear opening?					4.1.3(7)(b), 4.13.5
Are appropriate maneuvering clearances provided at accessible doors?					4.13.6, Fig. 25
Can doors be opened without too much force (5 lbf maximum for interior doors)?					4.13.11
Are door handles 48 inches high or less and operable without tight grasping, pinching, or twisting of the wrist?					4.13.9
Are all thresholds level (less than 1/4 inch), or beveled, with a slope no greater than 1:2 up to 1/2 inch high?					4.13.8
If there are sliding doors, is the operating hardware exposed and usable from both sides when the doors are fully open?					4.13.9
In assembly areas with fixed seating, is the required number of wheelchair locations provided (see table at 4.1.3(19)(a) of ADAAG)?					4.1.3(19)(a)
Is each wheelchair space at least 48 inches deep for approach from the front or rear, and 60 inches deep for approach from the side?					4.33.2
Do wheelchair spaces adjoin an accessible route that also serves as an accessible means of egress?					4.33.3
Is at least one companion fixed seat provided next to each wheelchair seating area?					4.33.3
Does an accessible route connect wheelchair seating locations with performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers?					4.33.5
In assembly areas where audible communications are integral to the use of the space, are an adequate number of assistive listening systems provided?					4.1.3(19)(b)
Is there signage indicating the availability of the assistive listening devices?					4.1.3(19)(b)

## Resource 6-2: Facility Checklist

### CAFETERIAS

<b>General Area/Building:</b>				<b>Reviewer:</b>	<b>Date:</b>
Questions	Compliance? Y    N    NA	Dimensions Comments	ADAAG		
Does at least one door into each public space have at least a 32-inch clear opening?					4.1.3(7)(b), 4.13.5
Are appropriate maneuvering clearances provided at accessible doors?					4.13.6, Fig. 25
Can doors be opened without too much force (5 lbf maximum for interior doors)?					4.13.11
Are door handles 48 inches high or less and operable without tight grasping, pinching, or twisting of the wrist?					4.13.9
Are all thresholds level (less than 1/4 inch), or beveled, with a slope no greater than 1:2 up to 1/2 inch high?					4.13.8
If there are sliding doors, is the operating hardware exposed and usable from both sides when the doors are fully open?					4.13.9
Are at least 5%, but a minimum of one, of the fixed tables accessible?					4.1.3(18), 5.1
Is the knee space at accessible tables at least 27 inches high, 30 inches wide, and 19 inches deep?					4.32.3
Is the top of each accessible table or counter between 28 and 34 inches above the floor?					4.32.4
Where possible, are the accessible tables or counters distributed throughout the space?					5.1
Are all aisles between accessible fixed tables at least 36 inches wide?					5.3
Where counter service is provided, is there at least a 60 inch long portion of the main counter that is no more than 34 inches high and that has at least 27 inches of knee space below or is service available at accessible tables within the same area?					5.2
Do food service lines have at least 36 inches clear width?					5.5
Are tray slides no more than 34 inches above the floor?					5.5
Are at least 50% of self-service food service shelves 15 to 48 inches for perpendicular approach and 9 to 54 inches for parallel approach?					5.5
Are self-service shelves and dispensing devices for tableware, dishware, condiments, food, and beverages installed 15 to 48 inches for forward approach or 9 to 54 inches for parallel approach?					5.6, 4.2
Do self-service shelves and vending machines have at least a 30- by 48-inch clear floor space?					5.6, 5.8, 4.2
Are vending machines on an accessible route?					5.8, 4.2.4

## Resource 6-2: Facility Checklist

### LIBRARIES

<b>General Area/Building:</b>				<b>Reviewer:</b>	<b>Date:</b>
Questions	Compliance? Y    N    NA			Dimensions/ Comments	ADAAG
Does at least one door into each public space have at least a 32-inch clear opening?					4.1.3(7)(b), 4.13.5
Are appropriate maneuvering clearances provided at accessible doors?					4.13.6, Fig. 25
Can doors be opened without too much force (5 lbf maximum for interior doors)?					4.13.11
Are door handles 48 inches high or less and operable without tight grasping, pinching, or twisting of the wrist?					4.13.9
Are all thresholds level (less than 1/4 inch), or beveled, with a slope no greater than 1:2 up to 1/2 inch high?					4.13.8
If there are sliding doors, is the operating hardware exposed and usable from both sides when the doors are fully open?					4.13.9
If there is a turnstile or security device, is there an accessible door or gate adjacent to it?					8.3, 4.13
Is at least one lane for each check-out area accessible?					8.3
Are at least 5% (but a minimum of one) of fixed seating, tables or study carrels accessible?					8.2
Is there a clear floor space of 30 by 48 inches for wheelchair spaces at accessible tables?					8.2, 4.2
Are the tops of the accessible fixed tables between 28 and 34 inches above the floor?					8.2, 4.32.4
Is there knee space under the accessible, fixed tables at least 27 inches high, 30 inches wide and 19 inches deep?					8.2, 4.32.3
Are the aisles leading up to and between accessible tables and carrels at least 36 inches wide?					8.2, 4.2.3
Is the clear aisle space at card catalogs and magazine displays at least 36 inches wide?					8.4
Is the minimum clear aisle width between stacks at least 36 inches?					8.5
Are card catalogs between 18 and 54 inches high?					8.4

### Resource 6-3: Analyzing Options

*Collect the barriers that were identified and items that were found not to be in compliance with ADAAG from Resource 6-2; list these in the first column. Complete the table by listing the options that the team develops, the one option that is finally selected, and the action plan for achieving accessibility.*

Barrier	Proposed Solutions	Selected Option	Action Plan	Specify Fundamental Alteration/Undue Burdens

## CHAPTER SIX: Program and Facility Access

Program Accessibility	Ch. 6 Pg. 1
<b>"program accessibility"</b>	Ch. 6 Pg. 2
What is a Program or Activity?	Ch. 6 Pg. 3
The Entire Scope of Programs and Activities	Ch. 6 Pg. 4
<b>"in their entirety,"</b>	Ch. 6 Pg. 4
buildings	Ch. 6 Pg. 4
support facilities	Ch. 6 Pg. 4
Program Access in Existing Facilities	Ch. 6 Pg. 5
Existing Facilities and Architectural Accessibility Standards	Ch. 6 Pg. 6
Methods of Compliance	Ch. 6 Pg. 6
<b>"most integrated setting"</b>	Ch. 6 Pg. 6
1. Reassignment of services to an accessible location.	Ch. 6 Pg. 7
2. Purchase, redesign, or relocation of equipment.	Ch. 6 Pg. 7
3. Assignment of aides.	Ch. 6 Pg. 8
4. Structural changes to eliminate barriers.	Ch. 6 Pg. 8
Fundamental Alterations and Undue Burdens	Ch. 6 Pg. 10
Designated Historic Buildings	Ch. 6 Pg. 11
Providing Access in Leased Space	Ch. 6 Pg. 12
New Construction and Alterations	Ch. 6 Pg. 13
Coverage Under Both Title II and Section 504	Ch. 6 Pg. 14
ADAAG and UFAS	Ch. 6 Pg. 15
Curb Ramps	Ch. 6 Pg. 16
Alterations to Historic Properties	Ch. 6 Pg. 16
Maintenance of Accessible Features	Ch. 6 Pg. 16
Implementing the Review of Program and Facility Access	Ch. 6 Pg. 17
Overview of the Program and Facility Access Review	Ch. 6 Pg. 18
Prepare to Conduct the Review	Ch. 6 Pg. 18
1. Review or complete list of One-Stop programs and partners from Resource 6-1.	Ch. 6 Pg. 19
2. Compile the list of facilities used for programs and activities from Resource 6-1.	Ch. 6 Pg. 19
3. Orient facilities assessment team to ADAAG and Resources 6-1 and 6-2.	Ch. 6 Pg. 19
4. Identify programs and spaces to be surveyed.	Ch. 6 Pg. 19
a. The current building(s) and location within the building(s) of each program.	
b. Program scheduling requirements.	
c. Program space requirements.	
5. Identify the spaces to be surveyed.	Ch. 6 Pg. 20
6. Complete facility review plan, including time frames.	Ch. 6 Pg. 21
Conduct the Facility Access Review	Ch. 6 Pg. 21
Analyze Program Access Options	Ch. 6 Pg. 22
1. Identify nonstructural and structural solutions.	Ch. 6 Pg. 23
criteria	Ch. 6 Pg. 24
Integration.	
Preferences.	
Capital planning information.	
2. Project long-term and short-term costs.	Ch. 6 Pg. 24
3. Document fundamental alteration/undue burden decisions.	Ch. 6 Pg. 24
Develop an Action Plan	Ch. 6 Pg. 25
1. Prepare a barrier removal plan.	Ch. 6 Pg. 25
2. Solicit comments on the draft action plan.	Ch. 6 Pg. 25
3. Adopt and implement final plan.	Ch. 6 Pg. 25
Resource 6-1: Program Inventory	Ch. 6 Pg. 27
Resource 6-2: Facility Checklist	Ch. 6 Pg. 28
PARKING	Ch. 6 Pg. 28
PASSENGER LOADING ZONES	Ch. 6 Pg. 28

EXTERIOR ROUTE OF TRAVEL .....	Ch. 6 Pg. 29
RAMPS .....	Ch. 6 Pg. 30
STAIRS .....	Ch. 6 Pg. 31
LIFTS .....	Ch. 6 Pg. 31
ENTRANCES .....	Ch. 6 Pg. 32
LOBBIES AND CORRIDORS .....	Ch. 6 Pg. 33
ELEVATORS .....	Ch. 6 Pg. 34
ROOMS AND SPACES .....	Ch. 6 Pg. 35
TOILET ROOMS .....	Ch. 6 Pg. 37
SHOWER ROOMS .....	Ch. 6 Pg. 39
ASSEMBLY AREAS .....	Ch. 6 Pg. 40
CAFETERIAS .....	Ch. 6 Pg. 41
LIBRARIES .....	Ch. 6 Pg. 42
Resource 6-3: Analyzing Options .....	Ch. 6 Pg. 43

## CHAPTER SEVEN: Requirements for Effective Communication

DRAFT, 7/25/2000

In order to have an equal opportunity to participate in programs, services, and activities, individuals with disabilities must have access to communication that is as effective as communication provided to individuals without disabilities. This chapter reviews federal requirements for effective communication.

The chapter begins with an overview of the requirement to provide effective communication, followed by a discussion of the requirement to provide auxiliary aids and services. Examples of technologies and devices that can provide alternatives to print, oral, and aural communication are offered. The chapter continues with a discussion of other requirements concerning communications--interpreter services, Teletypewriters or Telecommunication Devices for the Deaf (TTY/TDDs), emergency telephone services, and information and signage. The chapter concludes with an examination of the fundamental alteration/undue burden exception and a brief description of structural communication features.

At the end of the chapter, a practical guide to conducting the self-assessment of policies, procedures, and resources with respect to communication is presented. Resources are provided that can be used to conduct an initial self-assessment, to conduct periodic reviews to remain in compliance, or to prepare an action plan to provide auxiliary aids and services.

### AN OVERVIEW OF COMMUNICATION REQUIREMENTS

Under the federal disability regulations, One-Stop Operators and partners are required to ensure that program beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and members of the general public with disabilities are able to experience communication that is as effective as that provided to people without disabilities [29 CFR §37.9 (a)]. People with visual, hearing, and speech disabilities must all have the opportunity to receive and present communication in a manner that is appropriate and

#### **29 CFR §37.9**

##### **What are a applicant's responsibilities to communicate with individuals with disabilities?**

(a) Recipients must take appropriate steps to ensure that communications with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and members of the public who are individuals with disabilities are as effective as communications with others.

effective [ 28 CFR §35.160(a)]. People with disabilities must be able to obtain information regarding the existence and location of accessible services, activities, and facilities of One-Stop entities [29 CFR §37.9 (d)]. Communication support must be provided in a manner that enables people with disabilities to participate on an equal basis with all others, unless to do so would result in a fundamental alteration in the nature of a service, program, or activity [29 CFR §37.9 (f)], or in an undue financial or administrative burden [28 CFR §35.164]. Such exceptions rarely apply.

In addition, the regulations require the use of telecommunications devices (TDDs/TTYs for telephone communication with persons who have hearing impairments [29 CFR §37.9 (c)]; that inaccessible facilities be equipped with appropriate signage directing users to a location where they can obtain information about accessible facilities; and that the international symbol for accessibility must be used at each primary entrance of an accessible facility [29 CFR §37.9 (e)].

The self-assessment must include a complete review of policies, procedures, and resources that will ensure that people with disabilities are not unlawfully excluded, segregated, or restricted in any way as the result of communication barriers. Section 504 regulation and Section 188 of WIA also contain a number of nondiscrimination requirements that result in an obligation to provide effective communication.

## **Providing Auxiliary Aids and Services**

In order to provide equal access to public services, One-Stop Operators and partners are required to make appropriate auxiliary aids and services available whenever they are necessary to ensure effective communication [29 CFR §37.9(b)]. Upon the request of a qualified person with a disability, One-Stop Operators and partners must provide access to communication through appropriate auxiliary aids and services. Auxiliary aids and services include a wide range of services, equipment, and devices that provide effective communication to people with visual, hearing, mobility, or speech disabilities. For example, providing a qualified sign language interpreter for an individual who is deaf is an auxiliary service under the regulations. Other examples of auxiliary aids and services appear in the lists that follow.

### **29 CFR §37.9**

#### **What are a applicant's responsibilities to communicate with individuals with disabilities?**

(d) A recipient must ensure that interested individuals, including individuals with visual or hearing impairments, can obtain information as to the existence and location of accessible services, activities, and facilities.

### **29 CFR §37.9 (e)**

#### **What are a applicant's responsibilities to communicate with individuals with disabilities?**

(1) A recipient must provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities.

### **29 CFR §37.9**

#### **What are a applicant's responsibilities to communicate with individuals with disabilities?**

(b) A recipient must furnish appropriate auxiliary aids or services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the WIA Title I--financially assisted program or activity. In determining what type of auxiliary aid or service is appropriate and necessary, such recipient must give primary consideration to the requests of the individual with a disability.



Auxiliary aids and services for people who are **hearing impaired**:

- note takers
- computer-aided real-time transcription services (CART)
- amplified and hearing-aid compatible telephones,
- assistive listening systems
- open or closed captioning, and caption decoders
- sign language interpretation through the use of video conferencing technology
- teletypewriters or telecommunication devices for the deaf (TTY/TDDs)
- flashing alarms.

for people with **visual disabilities**:

- large print materials
- audio recordings
- computer disks or CD-ROMs
- brailled materials
- refreshable braille display
- screen reading
- screen magnification
- voice recognition software
- use of qualified readers
- providing verbal descriptions of action and visual information to enhance the accessibility of performances and presentations
- making a staff member available as a guide to enable a person with limited vision to find his or her way along an unfamiliar route
- Jobline (a toll-free telephone service that provides access to both America's Job Bank and participating state job banks)

for people with **cognitive disabilities**: (a diverse category that includes people with general processing difficulties, such as mental retardation and brain injury; and people with very specific types of deficits, such as poor short term memory, inability to remember names, learning disabilities, language delays, and more)

- readers
- writers
- communications assistants
- use of clear and concise language
- repetition
- screen readers
- tape recorders
- calculators

- voice recognition software
- audiotape recordings
- pictograms
- word prediction software
- Optical Character Recognition (OCR) system with speech synthesis/screen review capability
- voice-activated organizers (for recording facts, memos, telephone numbers, and reminders)
- graphical presentation of information. (for example, pictorial signage can assist people with cognitive disabilities to differentiate between a men's rest room and a women's rest room)

for people with ***mobility disabilities***:

- adjustable workstations
- alternative keyboards
- keyboard filters that compensate for erratic movement, tremors, or slow response times
- word prediction and spell checker software programs
- keyboard macros (both software and hardware) that allow a few keystrokes to be automatically translated into multiple keystrokes
- non keyboard dependent input devices, such as "sip and puff" systems and infrared links
- mouse alternatives, such as trackballs
- word prediction software
- speech recognition software
- keyguards that increase keyboard accuracy by stabilizing the user's hand movements
- Optical Character Recognition (OCR) to convert printed documents to PC-based documents

In addition to auxiliary aids and services that are available for use today, many other technologies will undoubtedly emerge in the future that will also constitute appropriate auxiliary aids and services.

Under federal disability regulations, recipients must provide appropriate auxiliary aids and services for programs and activities whenever necessary to ensure effective communication for program participants and the public, unless providing the auxiliary aids result in an undue burden or in a fundamental alteration of the program [28 CFR §35.102 (Preamble)]. For example, upon request, One-Stop Operators and partners may have to provide qualified sign language interpreters for members of the public at job fairs and for program participants taking part in training.

## Guidelines for Determining Which Types of Auxiliary Aids and Services to Provide

The regulations include a requirement that recipients must give "primary consideration" to the requests of the individual with disabilities in determining what type of auxiliary aid or service is necessary [29 CFR §37.9(b)]. This means the recipient must give each person with a disability an opportunity to request the auxiliary aid or service of his or her choice. Further, a recipient must honor this request unless they can demonstrate that another aid or service will be effective for the individual requesting the service, that the proposed action would fundamentally alter the service, program, or activity, or that the action would result in undue financial and administrative burdens [28 CFR §35.164]. Even where a recipient can demonstrate a fundamental alteration or an undue burden, the recipient must take other measures to ensure that it does not discriminate against individuals with disabilities.

Deference to the request of the individual with a disability is crucial because of the range of disabilities, the variety of auxiliary aids and services, and the various circumstances requiring effective communication. It is important to consult with the individual to determine the most appropriate auxiliary aid or service because the individual with a disability is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective.

Thoughtful planning is required to handle requests for auxiliary aids and services expeditiously. Factors that may influence whether a particular auxiliary aid or service provides effective communication include:

- **The particular needs of the person requesting the auxiliary aid or service.** As mentioned earlier, when an auxiliary aid or service is requested, primary consideration should be given to the aid or service requested by the person with a disability; otherwise, the particular individual's needs may not be adequately met in spite of the recipient's efforts, and effective communication may not be achieved.

For example, Jan, a dislocated worker who is deaf, wishes to attend a job club meeting at her local One-Stop Center. Jan is a native user of American Sign Language and knows little English. In advance of the meeting, Jan requests that the

### 29 CFR §37.9 (b)

#### What are a applicant's

#### responsibilities to communicate with individuals with disabilities?

In determining what type of auxiliary aid or service is appropriate and necessary, such recipient must give primary consideration to the requests of the individual with a disability.

Center provide her with an interpreter who is qualified to interpret into American Sign Language. However, the school provides an interpreter who is qualified to interpret into Signed English. The Center has not provided Jan with communication that is equally effective to that provided to persons without disabilities.

- **The duration and complexity of the communication.** Longer, more detailed exchanges often require more powerful and faster modes of communication [28 CFR §35.160 (Preamble)]. For example, an exchange of handwritten notes might suffice for a deaf person who wishes to be directed to the computers in the resource room. But if that person is participating in a computer skills training class, an interpreter or other effective means of communication may be needed.
- **The context of the communication.** Environmental conditions, such as the difference between a structured office setting and an outdoor recreational setting, influence the effectiveness of various devices and techniques [28 CFR §35.160 (Preamble)].
- **The number of people involved.** Communication techniques that are effective between two people might not work well in a group context. For example, a person who has limited hearing may be able to understand one-to-one conversation in a quiet office setting, but may not be able to do so in a group setting [28 CFR §35.160 (Preamble)].
- **Importance and potential impact.** Some communications--such as those involving legal, financial, health, and safety issues--are particularly important and must be provided in ways that guard against errors, omissions, and misunderstandings [28 CFR §35.160 (Preamble)]. For example, if a person is in a discussion with a counselor to determine income-based eligibility for a program or service, it is particularly important that the person have a clear understanding of what the counselor is saying.

Recipients are obligated to respond to requests from individual members of the public for auxiliary aids and services that will enable them to benefit from the recipient's programs. However, recipients should provide certain widely distributed information in predictable alternative formats even without a specific request in order to ensure timely availability

of important material. For example, a recipient might want to have its informational brochure routinely available in large print, audiotape, Braille, and computer disk formats.

Given the short time span from the awareness of an individual's need for an auxiliary aid or service to the occurrence of some programs and activities, requests may occasionally be made that cannot be met in a timely fashion. This Guide recommends that when One-Stop Centers inform individuals of upcoming programs, activities and services, they suggest that individuals with disabilities provide reasonable advance notice of their need for auxiliary aids and services. Plans should also be in place for providing acceptable alternatives to requested auxiliary aids and services. In many instances, an alternative to the original request may be appropriate. Clear communication with the person making the request is essential to finding a suitable accommodation.

For example, a One-Stop Center sponsors evening classes in computer technology. At the beginning of the semester, Jennifer, who is blind, enrolls in an introductory class and requests that the One-Stop Center provide her the training manual in Braille. The One-Stop Center does not have the training manual available in Braille. However, the Center finds the book available on CD-ROM. Jennifer accepts the accommodation offered by the Center.

## **TECHNOLOGIES AVAILABLE FOR ALTERNATIVE COMMUNICATION**

Persons with varieties of disabilities experience varieties of barriers to effective communication. In a world of rapidly advancing technologies, alternative means of communication are becoming available to correspond to the major types of disabilities:

- visual (seeing)
- aural (hearing)
- oral (speaking)
- cognitive (a diverse category that includes people with general processing difficulties, such as mental retardation and brain injury; and people with very specific types of deficits, such as poor short term memory, inability to remember names, learning disabilities, language delays, and more)

- mobility (including the full range of motor skills and abilities)

This section reviews some of the technologies currently available to provide effective communication and suggests possible applications for One-Stop Centers. However, this description of technologies is not exhaustive. New technologies are constantly emerging.

## **Alternatives for Visual Communication**

Materials presented in a visual format can inhibit communication with persons who are blind or partially sighted. Print materials, visual displays, signage, and computer graphics may present barriers to people with vision impairments. The following are some of the auxiliary aids and services that may be used to overcome such barriers.

**Alternative Formats.** It is essential that information be available in a variety of formats in order to be accessible to users with a variety of disabilities. For example, One-Stop Centers should ensure that persons who are blind or have low vision have access to materials in Braille, on audiotapes or computer disks, large print, and other formats.

Braille is a tactile representation of written or printed language. It consists of characters made up of arrangements of raised dots. Not all blind persons read Braille, but many prefer it to tapes because it is easier to scan, easier to refer back to for information, and easier to reference. Braille is sometimes the only alternative form of visual information that a deaf-blind person is able to access since tapes and large print may be inaccessible.

Many people who have limited vision are able to read large print. Print is measured in "point" size. Standard print is usually 12 point. Large print is print that is larger than 16 point, usually 18 to 22 point. Personal computers provide the option of printing enlarged documents or formatting text in various font sizes. Large print can also be produced at low cost by using a photocopier that can enlarge. Making audiotapes or CD-ROMs of such program material as textbooks and course listings is often a good alternative to written information.

A Sans Serif type, such as Arial, is easily read by any user; however, a Serif type, such as Courier, is very difficult for low

vision readers to distinguish. Bold type is not recommended because the letters have smaller centers and may appear blurred to low vision readers and because ASCII type does not recognize bold codes.

When preparing printed material, it is advisable to always provide a sharp contrast between the typeface and the background and not to prepare documents with watermarks or photographs. Upper and lower case type is easier to read than type set in all capital letters -- although a few capitalized words will generally not present a problem. Extra spaces between lines is very helpful to low vision readers, as is the practice of avoiding fully justified margins.

There are many people who are blind or visually impaired who do not read Braille or large print, and who do not own a personal computer or are not comfortable with computers. These individuals will often find audiotapes more useful. Tapes are also sometimes helpful to people with learning disabilities such as dyslexia. Tapes can be prepared in-house or by a professional taping service.

**Adaptations for Computers.** Many individuals who have low vision or are blind, are computer literate and use computers every day as a way of accessing information. Transmitting information by providing a computer diskette or using e-mail may be good ways to overcome the barriers created by information presented in a visual format.

**Video description (also known as descriptive narration)** provides viewers who are blind or have low vision with additional narrative that often enables their comprehension of a video or an electronic document containing multimedia features. Descriptive narration of key visual elements, such as settings, sounds, graphics, and actions can be inserted into a video or electronic document to enhance the blind or visually impaired viewer's comprehension of the video event. Video description is generally provided through the Secondary Audio Programming (SAP) channel that is audible only when the channel is activated through a television or a VCR with SAP capability. More information on Video Description, is available on the Descriptive Video Service web page of The Corporation for Public Broadcasting/WGBH National Center for Accessible Media (NCAM). The website address is <http://www.wgbh.org/wgbh/access/dvs/>

### **Accommodating Computer Users With Low Vision.**

Computer software and hardware, assistive devices, and also simple strategies and practices, are available to facilitate input and output by computer users with low vision:

- Computers should not require user visual acuity better than 20/70
- Computers should be operable with little or no color perception.
- Software is available that controls key input acceptance rates and allows the cursor to be controlled from the keyboard instead of from the mouse.
- Screen reader software packages (also called speech synthesizers and voice output) are available to create "talking computers" that read computer screens. The process used to achieve voice output on a computer requires both a screen reader software package and appropriate speech synthesizer hardware to produce speech. Earphones can be used by speech synthesizer users in order to avoid disturbing other individuals in the same area.
- Screen magnification software or hardware can increase the size of characters on the screen up to 16 times.
- Glare Protection Screens minimize visual fatigue associated with glare on the monitor.
- Large Monitors with High Resolution (19"-25") increase character size in proportion to monitor dimensions and provide a crisp, sharp image.
- Hardware exists that can magnify any item placed under its camera; documents, drawings, phone messages, etc. can be seen enlarged on an attached monitor.
- Large print software packages are available that will print large, bold text.
- Copy machines with enlarging and reducing capability provide enlarged print copies for persons with impaired vision who find magnification helpful and small print copies for persons with visual impairments such as tunnel vision, which narrowly restricts the field of view.



- Color, contrast, and brightness can be selected by individuals to facilitate their use.
- Keyboard orientation aids, such as a raised dot can be added to certain keys such as the home row keys or the number five on the numeric keypad to give a tactile orientation to the keyboard to augment visual orientation.
- Other keyboard aids, such as adhesive backed labels that have large, bold letters can be applied to the standard keyboard keys. These labels can be purchased in either white on black background or black on white background.

**Accommodating Computer Users Who Are Blind.** For blind users, other accommodations have been developed:

- Screen reader software packages (also called speech synthesizers and voice output) are increasingly common and inexpensive.
- Braille printers/embossers are operated like non-Braille printers and produce hard copy that can be read and kept for reference. Transcription software is readily available to convert the word-processed text into symbols the printer can recognize.
- Refreshable braille screens translate text from a computer monitor to a device with a row of braille cells that change as each new line is presented. The individual reads the screen contents using the dynamically changing braille display.
- Optical character recognition (OCR) enables a person who is blind to independently access print material by converting printed documents to speech output or directing them to a PC equipped with a braille input mechanism.
- Keyboard enhancements such as a raised dot, or a braille marker can be added to the standard keycaps on selected keys such as the home row keys, control, or alt keys to provide tactile keyboard orientation. In addition, auditory status indicators for toggle keys, such as "shift lock" or "number lock," can often be provided by software.
- Braille translation software enables the user to enter text in standard print, translate it into a Braille hard copy for review or modification by a blind person, and then

retranslate it to standard print for return to a sighted individual.

- Braille portable note taking devices consist of a keyboard with six keys and a space bar, which are used to enter Braille code for note taking, editing and storage of information. The output display can be a refreshable 20-cell display that can be connected to a Braille or standard printer, or to a personal computer for file transfers.
- Voice recognition software enables computer users who are blind or have mobility impairments, including mild to severe carpal tunnel syndrome, to give voice commands and/or mouse movements rather than use the keystroke equivalent. This application has become so popular both among people with disabilities and people without disabilities that word processing software manufacturers are beginning to add the application without charge, to their word processing packages.
- Tactile output of images, also known as tactile graphics, such as raised line drawings, may be useful for some blind individuals. Several braille printers and wax jet printers have the capability of producing raised line drawings. There are also handheld devices that use an array of vibrating pins to present a tactile outline of the characters or text under a viewing window.
- CD ROM format offers a more easily manipulated, less bulky format than braille for accessing large amounts of information, such as training manuals, guides, dictionaries, encyclopedias, and magazines.
- Telephone light pens enable individuals who are blind to use a multi button phone set and recognize which telephone line is ringing, on hold, or not in use. A light pen gives an auditory signal when it is held next to the phone set button that is lit or blinking.

**Formatting Computer Disks For People Who Are Visually Impaired.** People with low vision may access documents contained on computer disks or transmitted via e-mail by using screen magnification software (e.g., Zoom Text). It is helpful to provide such documents to low vision computer users in a large font (at least 16 point type), which may negate the need for further magnification, and will improve image quality in the event that additional magnification is

required. Avoid the use of color to convey information or to provide a cue (i.e., red =stop, green=go). The layout of documents will be greatly enhanced with the use of bullet points and distinct headings to separate sections of the document. Text that moves on the screen (also referred to as a banner) is very difficult to read - even for those with mild visual impairment - and should be avoided.

Documents created in electronic format present special challenges for people who are blind. Computers users who are blind can read computer documents by using a refreshable braille display or by listening to speech output. Screen reader software reads text from a word processing program or Internet browser, and can provide either braille display or a speech synthesized reading of the words on the screen. People employing this technology typically use tab and arrow controls to move through menus, buttons, icons, text areas and other elements on the screen.

ASCII text (also known as plain text) is the format that is readable by any software used by blind and visually impaired people. ASCII text has 75-80 characters per line and is free of codes such as bold, underlining, page breaks, tabs, indents, centering and bullet points.

**Columns, Charts and Graphics.** In documents that are accessible to persons with visual impairments, columns, charts and graphics are eliminated in favor of vertical presentation of information. Newspaper style columns are replaced with paragraph-style text, with at least two hard returns between different sets of information. Graphics, such as embedded images, should be eliminated and replaced with a text description of the graphic. Information from complex charts should be reformatted as text-based summaries in which different batches of information are separated by two or more hard returns. Information contained in simple charts can be presented in a more concise format. Column headings should be listed on one line and separated with commas. Subsequent lines will contain related data, separated from one another by semicolons. Reformatting charts and graphs may require some experimentation to arrive at the representation that most effectively communicates the data.

The following is an example of how information from a three-column chart might be conveyed:

In the chart below, column headings are as follows:

State (in Region 1), Year of Grant, Number of Centers

Connecticut; Final; 11  
Massachusetts; Final; 7  
Vermont; First; 12

Total Number of Centers: 30

**Graphically Based Computer Presentations.** Graphics-based presentations, such as Power Point and Presentations are popular tools for producing resources that can be displayed as a slide show, on a computer screen, or printed as handouts. The graphics that are available in such programs, however, present enormous challenges. When projected on a screen, these presentations are inaccessible to a wide range of people with visual impairments. When distributed on disk, their graphic codes cannot be read by screen reader software. Although screen reader software can read the text contents of buttons, menus, and other control areas, screen readers cannot read the contents of an icon or image.

When providing graphically based information, such as maps, charts, photographs and illustrations via the Internet or on computer disk, trainers or developers should complement the information with a text description. Including text descriptions of images also accommodates computer users who have slow modems and must use text only browsers to access information on the Internet. When utilizing graphics-based presentations at conferences, workshop coordinators and other individuals making presentations can ensure that these presentations are accessible to blind and visually impaired attendees by providing the information on a computer disk formatted as ASCII text. Given adequate lead time and guidelines for preparing accessible electronic documents, presenters can generally develop two distinct presentations: a graphics-based presentation and a plain text version. Presenters should also be instructed to provide text descriptions for audio clips used in multimedia presentations.

**Portable Document Format (PDF).** Portable Document Format (PDF) from Adobe is very popular on the World Wide Web because it enables the publisher to retain the look and layout of the original publication. PDF documents may be accessed using Acrobat Reader, which may be downloaded free of charge from Adobe. However, both PDF and Acrobat

Reader are graphics-based; hence, inaccessible to blind computer users who read text using a screen reader or operate in text mode.

Adobe has developed methods to make PDF and Adobe Acrobat products accessible to the visually impaired. PDF documents on the Internet can be converted “on-the fly” by Adobe and read as HTML documents, which are generally accessible. This service is available through the Adobe website at <http://access.adobe.com>. Though many have had success utilizing this service on simple documents, others have experienced a much lower success rate converting documents with complex graphics. Content is lost or mislocated in the converted document. Rather than require readers to convert web-based PDF documents on an individual basis, Web page authors should provide the converted (and re-edited) document, saving their readers the time and frustration inherent in this process.

Alternatively, users can e-mail the URL of any PDF document on the web directly to Adobe at [pdf2txt@adobe.com](mailto:pdf2txt@adobe.com) (for plain text) or to [pdf2html@adobe.com](mailto:pdf2html@adobe.com) (for HTML). The document will be converted to HTML or ASCII text, and returned in a matter of minutes. This option allows users to submit multiple URLs in a single e-mail message.

The Adobe e-mail option also allows users to convert documents that originate from sources other than the web, such as an individual’s PC or a CD-ROM. PDF documents located on local media, such as a hard drive, CD-ROM, or internal server, can be submitted as a MIME attachment to an e-mail message. All converted PDF documents will be sent back to the sender as MIME attachments. Users who would like to receive a plain text version of their document may email the attached PDF to [pdf2txt@adobe.com](mailto:pdf2txt@adobe.com). Users who would like to receive HTML versions, may email the attached PDF to [pdf2html@adobe.com](mailto:pdf2html@adobe.com). Additional information on the [access.adobe.com](http://access.adobe.com) email conversion service is available at: [http://access.adobe.com/access\\_email.html](http://access.adobe.com/access_email.html).

Another option for conversion of PDF documents is the Trace Research Center at the University of Wisconsin, which provides a translation service similar to Adobe’s. Users can mail the URL of the PDF or attach the PDF document to an email message and send it to [pdf2txt@sun.trace.wisc.edu](mailto:pdf2txt@sun.trace.wisc.edu) (for plain text) or to [pdf2html@sun.trace.wisc.edu](mailto:pdf2html@sun.trace.wisc.edu) (for HTML). The convertor will mail back the translation of the PDF file.

If PDF files are not on the Internet and the user does not want to submit a file as an e-mail attachment, Adobe offers the option of an Acrobat Access plug-in. Adobe Acrobat Access 4.0 for Microsoft Windows software is a plug-in for Adobe Acrobat software that converts PDF files on a user's local system into plain text, which can then be read by screen reading programs. This option is available to users of Windows 95, 98, or NT. Directions for installing and using the Acrobat Access plug-in are available at [http://access.adobe.com/access\\_plugin.html](http://access.adobe.com/access_plugin.html)

Current tools from Adobe do not provide full accessibility to PDF forms. Adobe has set up a technology demonstration of accessible PDF forms that are available for Acrobat 4.05 for Windows. Adobe cautions users that the demonstration is not intended to be a full solution but provides an illustration of future plans to enhance Acrobat accessibility. Additional components must be downloaded and installed in order to enable the PDF forms accessibility demonstration. More information on Adobe's technology demonstration is available at [http://access.adobe.com/forms\\_demo.html](http://access.adobe.com/forms_demo.html)

Adobe has released PDF 1.3 that contains enhancements to the PDF format for Logical Document Structure, including such elements as title page, chapters, sections, and subsections. For users who are visually impaired, access to longer, more complex documents, such as newspapers, is greatly enhanced by an understanding of the document's logical structure. A full description of current services and additional information on the upcoming version of PDF is available through the Adobe website at [http://access.adobe.com/access\\_whitepaper.html](http://access.adobe.com/access_whitepaper.html) .

## **Alternatives to Aural/Oral Communication**

**Aural/oral:** "Aural" refers to information that is heard; "oral" refers to spoken communication. A person who is hearing-impaired experiences barriers related to aural communication. However, the same person may be able to communicate orally. A person who has a speech impairment, or a cognitive impairment that affects speech, may experience barriers in communicating orally, but have no difficulty receiving information aurally. Each person will require different auxiliary aids and services in order to be provided equally effective communication. The following are some of the most widely used devices that can assist with verbal communication.

**Writing** may serve as an alternative to spoken communication. Pen and paper may be an effective form in situations where communication is simple. In a more complicated situation other methods should be considered.

**Computer-Aided Real-Time Reporting (CART)** is a translation service for deaf or hard of hearing people who read English fluently. It has proven quite effective in training, meeting or conference settings. A trained court stenographer records the proceedings of a meeting. With computer link and translation software, the stenotype report is translated into English text on the deaf or hard of hearing person's computer with less than a one-second delay. Additional technology such as display panels and overhead projectors allow the text to be read by many persons at the same time. CART allows a person with hearing impairments to read the verbatim proceedings of a meeting or class in "real-time" and thus become an active participant. The information entered by the reporter can also be saved on a disk and printed for use as notes or a record of meeting activities. For assistance in obtaining this service, contact a local court stenotypist organization, agencies that provide interpreters, or other organizations serving people who are deaf or hard of hearing.

**Assistive Listening Devices**, also called assistive listening systems, can be used to enhance hearing in one-on-one situations. They may be fixed or portable. In one type of system, a speaker's microphone is connected to an FM transmitter. The listener wears a portable headset that can be used anywhere in the room and is able to receive the amplified sound. Multiple listeners can benefit simultaneously from this type of system. It is important to note that with respect to new construction, both the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities and the Uniform Federal Accessibility Standards contain scoping and technical requirements for assistive listening systems in assembly areas [ 4.1.3(19)(b) and 4.33, *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities* (1991) and 4.1.2(18)(b) and 4.33, *Uniform Federal Accessibility Standards* (1985)].

**Text Telephone/Telecommunication Devices for the Deaf (TTY/TDDs)**, or equally effective telecommunication systems, are required by federal disability regulations for recipients that communicate by telephone with program beneficiaries, registrants, applicants, eligible applicants/

**29 CFR §37.9 (c)**

**What are a applicant's responsibilities to communicate with individuals with disabilities?**

Where a recipient communicates by telephone with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, and/or employees, the recipient must use telecommunications devices for individuals with hearing impairments (TDDs/TTYs), or equally effective communications systems, such as telephone relay services.

registrants, participants, applicants for employment and/or employees, or the general public, for communication with individuals who have impaired hearing or speech. TDDs are surprisingly inexpensive. The requirements regarding TTY/TDDs are discussed in greater detail later in this chapter.

**Telephone Relay Services** are required by Title IV of the ADA for use with individuals who rely on TTYs or TDDs. A TRS enables telephone conversations between individuals with hearing or speech disabilities who are using a TTY/TDD and individuals who may or may not have such disabilities, and are using traditional handsets (voice users). TRS relies on an intermediary (also called a Communications Assistant) to relay the content of telephone calls between users of TTYs/TDDs and voice users. The intermediary verbalizes the TTY/TDD message and translates the verbalized message into the TTY/TDD. The Federal Communications Commission has issued regulations specifying standards for the operation of these services.

**Telephone Amplification.** Many hearing aids have a telephone setting that can amplify sound if an appropriate handset is used. The telephone company can provide a handset with the appropriate magnetic field intensity to be compatible with this type of hearing aid setting. Battery-powered, portable handset amplifiers are also available. The amplifier can slip over the handset of most telephones.

**Hearing aid compatible phones.** When a person wearing a hearing aid attempts to use a telephone that is not hearing aid compatible, they often hear a very loud, high pitched squeal. This can be quite uncomfortable, and often precludes using the telephone to carry on a conversation. Individuals with hearing aids should be provided with hearing aid compatible phones. The Hearing Aid Compatibility Act (Public Law 100394) required that by August 1989, all essential telephones and all telephones, manufactured in the United States or imported, "provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility." Some individuals who wear hearing aids may still need an additional phone amplification device.

With respect to new construction, both the ADA Accessibility Guidelines for Buildings and Facilities and the Uniform Federal Accessibility Standards contain scoping and technical



requirements for accessible public telephones equipped with volume controls [§§4.1.3(17)(b) and 4.31.5, *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities* (1991) and §§4.1.2(16)(b) and 4.31.5, *Uniform Federal Accessibility Standards* (1985)]. With respect to new construction, the ADA Accessibility Guidelines for Buildings and Facilities also specifically requires hearing-aid compatible telephones [§4.31.5(1), *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities* (1991)].

**Signaling system.** For a person who is hard of hearing or deaf, the normal sounds and tones that alert one to take action, such as a phone ringing, may not be heard. A transmitter can be attached to a phone that will cause a light to be flashed or a personal alerting device to vibrate when the phone rings. Transmitters can be used to activate a visual signaling system for fire alarms and door buzzers in addition to telephones. For some individuals, tone ringer devices that convert the ring of telephones into a frequency range more easily heard are beneficial.

**Adaptations for Computers.** Since operating a personal computer is essentially a visual task, users who are deaf generally do not experience significant difficulties with computer technology. However, One-Stop Centers will want to ensure that important information conveyed by beeps or speech during computer-related tasks is also displayed visually for the user unable to benefit from the auditory information. Computer operating systems often have built-in options for visually displaying auditory alerts. If necessary, a flashing light signal should be installed that echoes the beeps.

**Electronic Speech Aids.** A number of devices are available that support the exchange of information electronically. Among them is a small device that accepts and displays typed text. Such a device could be kept in a One-Stop Center's resource room for ready use with customers who are deaf. Speech synthesizers may also be used to facilitate communications with persons who have speech impairments.

**Captioning Television and Videotape Programming.** Audio portions of television and videotape programming produced by public entities are subject to the requirement to provide equally effective communication for individuals with hearing impairments. Captioning of such programs is sufficient to meet this requirement [28 CFR §35.160 (Preamble)]. In addition to displaying spoken dialogue and

music lyrics, captions may identify speakers, sound effects, background music, and laughter. "Open" captions are inherent to the actual film footage and always appear directly on the television screen; "closed" captions are hidden as encoded data within the television signal and are displayed only when activated by the viewer who is using a television or projection system that has a decoder chip. Since 1992, all televisions with screens 13" or larger are required to be equipped with the technology to display captioning, and are described as "caption-ready." Older televisions can be adapted for closed-captioning through the connection of a separate decoder box (cost under \$100) to the television.

**Video conferencing** technologies can be an effective tool in reducing the communication barriers and lost employment opportunities faced by deaf and hard of hearing individuals. Video conferencing technologies may be used to provide remote sign language interpreting services to people who are deaf and hard of hearing. Users dial up a sign language interpreting service and a two-way audio-video hookup provides the linkage over the telephone line. Generally, the sign language interpreting service bills only for the time in which services were provided, rather than the usual two hour minimum. Higher transmission speeds through ISDN or DSL lines help minimize blurring of the images, so that the interpreter and the Deaf/Hard of Hearing user can understand one other's signs. One-Stop Centers nationwide may use this technology for interviewing employment candidates, for mediated services, and for training deaf and hard of hearing job seekers in the use of the self-service area.

**Sign Language Interpreter Services.** When sign language interpretation is necessary, Title II requires that it be provided by a "qualified interpreter," that is an individual who is "able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary" [28 CFR §35.104]. To satisfy this requirement, the interpreter must have the proven ability to effectively communicate the type of information being conveyed.

**28 CFR §35.104 Definitions**

Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.

The interpreter qualifications most appropriate in each instance will vary. Certified interpreters are not required; in some cases, experienced interpreters familiar with the subject area will do a better job of capturing the content than a certified interpreter who lacks subject area expertise. It is generally not appropriate to use a family member or

companion as an interpreter. The deaf or hard of hearing person has the right to request an impartial interpreter.

One commonly asked question is **when** an interpreter is required. Although a notepad and pen for written communication may be sufficient for simple conversations, an interpreter may be necessary when the information is complex or the exchange is lengthy. For example, a conference, training session, or public lecture should be interpreted for members of the audience who are deaf. Factors to consider in determining whether an interpreter is required include:

- Size of the conference;
- Duration of the conference;
- Number of sessions and whether they are concurrent or consecutive;
- Subject complexity;
- Number of participants requiring interpreting services; and
- Type(s) of interpreting services requested (i.e., ASL, PSE, Tactile Sign, Oral).

Depending on the cause and age at onset of hearing loss, the type of interpretation required can vary greatly. The following information may aid in understanding various types of communication modalities and interpreting services needed.

American Sign Language (ASL) is the language of the deaf in the United States. It is a unique language in and of itself, complete with its own lexicon, grammar and syntax.

English-Based Sign commonly referred to as PSE for Pidgin Sign English, is a form of manual communication in which characteristics of both English and ASL are combined.

Sign Language Interpreting is the process by which a spoken (hearing person's) or a signed language's (deaf/hard of hearing person's) message elements are linguistically analyzed and cultural and linguistic transitions are made to produce the message into the target language.

Oral/Oral Tactile Transliterating is the process by which a spoken English message is heard, then re-phrased into clearly speech-readable form for a deaf/hard of hearing (or deaf/blind person who uses speech and speech reading as primary forms of communication) to place his/her hands(s) on the interpreters mouth/face to "read" the message produced orally.

Tactile Interpreting/Transliterating is the process by which a spoken language (hearing person) or signed language (deaf/deaf/blind/visually impaired) message is produced in a manual form utilizing sign language and finger spelling, where linguistic and environmental information elements are analyzed, incorporating cultural and linguistic transitions to produce the message into the target language. A person who is deaf/blind/low vision (VI) deaf physically “reads” the communication by placing his/her hand(s) on the interpreters hand(s) and/or mouth/face, tactily reading the communication rendered through the signs/finger spelling produced.

“Staging” issues should be considered in planning meeting forums which will take place during a conference. Five criteria for effective interpreting are:

1. Reasonable proximity to the speaker and to the consumer receiving the services;
2. A clear visual line of sight from the consumer to the interpreter to the speaker;
3. Sufficient lighting (especially during video, overhead or any presentation requiring low-level lighting);
4. Sufficient standing room (preferred minimum of 4 square feet for platform interpreting) or seated setting; and
5. Ability to hear the speaker or sound system clearly from the designated interpreting location.

Seating should be reserved for participants who are deaf/hard of hearing and deaf/blind that provides an unobstructed view of the proceedings and meets the criteria stated above.

For assistance in obtaining and scheduling interpreting services, local area resources may include a State’s Department for the Deaf and Hard of Hearing (or equivalent agency), or agencies that specialize in Sign Language Interpreter Services. A referral for local sign language interpreter services can often be obtained through a State Vocational Rehabilitation Office. In addition, The Registry of Interpreters for the Deaf, a national organization of professional sign language interpreters/transliterators, can provide information on interpreting resources in a local area. It can be reached by phone at 301-608-0050.

## **Accommodations for People with Cognitive Impairments**

Cognition includes all of the brain’s mental input and output. People with cognitive impairments experience symptoms that

affect the ability to think, perceive, act, or react. Cognitive limitations of varying degrees can be found in people who have been classified as having a learning disability, mental retardation, autism, or brain injury. People who have been diagnosed with a mental illness, such as severe depression and schizophrenia may also experience cognitive limitations. Research has shown that a significant percentage of welfare program beneficiaries often described as “hardest to serve,” have previously undiagnosed, cognitive limitations, including learning disabilities.

Effective communication requires the cognitive ability and skill to use language and other processes such as attention, memory, self-awareness, organization, and problem solving. Although the need for reasonable accommodations may seem less obvious, people with cognitive impairments often benefit from the same solutions and technology that assist people with visual and aural/oral communication limitations. In general, software that is designed to be user friendly can facilitate self-service access for people with cognitive impairments. Increase the accessibility of computers and software by:

- Utilizing a Multimedia/multi sensory approach that combines auditory and visual elements to provide reinforcement of the information presented
- Ensuring that all messages and alerts remain on the computer screen until they are dismissed by the user
- Using simple and consistent screen layouts
- Using easily interpreted icons with accompanying text description
- Using on-screen language targeted at elementary school levels
- Avoiding blinking or scrolling objects or text, which can be highly distracting for some people

Examples of computer hardware and software available to assist people with cognitive impairments include:

**Screen reader software packages** provide auditory reinforcement of the information on the screen.

**Optical Character Recognition (OCR) system with speech synthesis** can scan and convert printed materials into computer documents that can be read by a speech synthesizer. This technology can improve comprehension for a person with poor reading skills.

**Voice recognition software** enables the user to operate the computer by giving voice commands. This technology may assist people who have good oral language skills but experience limitations in their written language skills.

**Captioning television and videotape programming** can aid people with certain cognitive impairments by focusing their attention and enhancing their ability to process information.

**Video description** can contribute to increased understanding of the visual elements of television, videotape, or computer-based programming.

**Word processing software enhancements**, such as spell checkers, word prediction capability, grammar check, dictionaries and thesauruses, proofreading, and word echo functions all assist persons with various cognitive impairments.

**FM amplification devices** can enhance an individual's ability to concentrate on a speaker and ignore distracting noises.

**CART** is very effective in group meetings, such as workshops, and on-the-job training. The information entered by the reporter can be saved on a disk and printed out for users with cognitive impairments.

### **Accommodations for People with Mobility Impairments**

Even the most sophisticated technology will not help One-Stop customers with mobility impairments if it is not physically accessible to them. If a customer using a wheelchair can not get close enough to reach the mouse, the computer is not accessible regardless of other accessibility features it may have. Listed below are factors to keep in mind when evaluating the technology in a One-Stop Center for accessibility for people with mobility impairments:

- Computers should be operable with limited reach and strength

- Computers should be operable with limited manual dexterity (functions should not require fine motor control or simultaneous actions).
- Sticky keys are an accommodation that allows people who are unable to hold down two or more keys simultaneously (e.g., CTRL+ALT+ DEL) to get the same result by typing one key at a time.
- Voice input software (e.g., DragonDictate) allows the user to give oral commands that the computer types on the screen.
- A form of track ball may be easier to operate than a mouse.
- Alternative input devices can allow individuals to control their computers through means other than a standard keyboard or mouse. Examples include alternative keyboards, eye-gaze, and head pointing devices that operate via infrared links.
- Headmaster8 is an alternative input device that attaches to the user's head and controls the on-screen keyboard via an infrared link. Individuals using the Head Master sip and puff through a plastic straw-like device to activate keys on the screen.

## TELEPHONE COMMUNICATIONS

Section 188 regulations require that where the grant recipient communicates by telephone with beneficiaries, registrants, eligible applicants/registrants, participants, applicants for employment, and /or employees, the recipient must use telecommunications devices for individuals with hearing impairments (TDDs/TTYs) or equally effective communications systems, such as telephone relay services [29 CFR §37.9 (c)].

Sometimes called text telephones (TTs), teletypewriters (TTYs), or telecommunications device for the deaf (TDD), these devices provide a printout or digital display that enables a person who is deaf or hard of hearing to hold a two-way conversation through the written word. TTY/TDD users type and read messages over the telephone lines rather than talking and listening to telephone conversations. A personal

### **29 CFR §37.9 (c)**

#### **What are a applicant's responsibilities to communicate with individuals with disabilities?**

Where a recipient communicates by telephone with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, and/or employees, the recipient must use telecommunications devices for individuals with hearing impairments (TDDs/TTYs), or equally effective communications systems, such as telephone relay services.

computer can be configured to function as a TTY/TDD by adding a compatible modem that supports both the Baudot code of older TDDs and the ASCII code of the personal computer. PC-based TTY/TDD delivery should allow for call announcement and pickup without exiting other applications. There are PC based TTY/TDD options available with a vertical or horizontal split-screen feature, enabling a person who is deaf to have a more natural conversation with a person who is not deaf. There is also networking software available that enables organizations to use their existing computer network to provide deaf clients, customers, and employees using TTY/TDD with communications access to everyone within the organization.

TTY/TDD with refreshable braille display enables deaf/blind individuals to communicate with sighted individuals by accessing the telephone system in the same way a standard TDD user would. Instead of reading the text displayed visually, the deaf/blind individual reads the refreshable braille display unit.

Where communication by telephone is a major function of a particular component within a One-Stop delivery system, TTY/TDDs should be available [28 CFR §35.161 (Preamble)]. Also, if a recipient does not presently make any public pay telephones available to program participants, employees, employment applicants, or the public, but does allow people without disabilities to use an office telephone to communicate with their staff, the recipient may be specifically required to provide a TTY/TDD so that people with hearing or speech impairments have a similar ability to communicate effectively with others. Where TTY/TDDs are installed, recipients should ensure that all employees who would use the TTY/TDDs are trained in their proper use.

It is important to note that, with respect to new construction and alterations to existing buildings and facilities, the *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities* contains scoping and technical requirements for TTY/TDDs [§§4.1.3(17)(c), 4.1.6(1)(e), and 4.31.9, *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities* (1991)]. The *Uniform Federal Accessibility Standards* do not contain specific requirements regarding TTY/TDDs.



## **Telephone Relay Services**

A telephone that is not equipped with a TTY/TDD device can be enabled to receive a call from a TTY/TDD user if a relay system is used to provide a spoken interface. Telephone Relay Services (TRS) employ a Communications Assistant as an intermediary to relay the content of telephone calls between TTY/TDD users and voice users. The Communications Assistant verbalizes the TTY/TDD message and translates the verbalized message into the TTY/TDD.

Title IV of the ADA requires all common carriers that provide telephone voice transmission services (i.e., telephone companies) to provide telecommunications relay services (TRS) throughout the area in which they provide service. Telephone relay services required by Title IV generally may be used to meet the disability requirement that recipients provide TTY/TDDs or equally effective telecommunication systems. Toll-free TRS services are available 24 hours a day, seven days a week.

The Section 188 regulations require that where such relay services are available, a recipient may use these services to meet the requirements for equally effective communication. However, where the grant recipient has extensive telephone contact with the public, or where the provision of telephone services is a major function of the recipient, the recipient should use TDDs/TTYs to ensure more immediate access [29 CFR §37.9 (c)].

Toll-free TRS services are now available round the clock in every state, including the District of Columbia, Puerto Rico, and all US territories. TRS also provides telephone access between standard voice telephone users and people who can hear clearly but have difficulty speaking over the telephone and prefer to use a TTY/TDD, or people whose speech is difficult to understand and prefer to communicate through a trained Communications Assistant who repeats the caller's words. This type of relay, called speech-to-speech relay services (STS), is not available in all States at this time; however, the FCC will require STS in all relay programs by March 1, 2001.

On July 21, 2000, the FCC required all telecommunications carriers nationwide to implement three-digit, 711 dialing access to all TRS services, and mandated an implementation period of one year. TRS users will no longer have to search

for the relay numbers of the other states or dial a 7 or 10 digit number to initiate relay calls. To learn more about the TRS and to access information on your state's relay service, visit the Federal Communications Commission's (FCC) website at: <http://www.fcc.gov/cib/dro/trs.html>.

## EMERGENCY TELEPHONE SERVICES

Many public entities provide telephone emergency services by which individuals can seek immediate assistance from police, fire, ambulance, and other emergency services. These telephone emergency services--such as "911" services--are clearly an important public service whose reliability can be a matter of life and death.

Under Title II of the ADA, public entities that operate telephone emergency services must provide direct access to individuals who use TDDs and computer modems for telephone communication [28 CFR §35.162]. This provision affects all One-Stop delivery systems that provide such services. "Direct access" means that emergency telephone services are able to receive calls from TTY/TDDs and computer modem users *without* relying on outside relay services or third-party services. A public entity may, however, operate its own relay services within its emergency system, provided that the services for non-voice calls are as effective as those provided for voice calls in terms of time response.

### **28CFR §35.162**

#### **Telephone emergency services.**

Telephone emergency services, including 911 services, shall provide direct access to individuals who use TDDs and computer modems.

## ELECTRONIC AND INFORMATION TECHNOLOGY

Computers and other electronic and information technologies are present in almost all workplaces and are an integral part of daily living. At the same time, the pace of advancement in electronic and information technology is rapid and the level of innovation is high. Given the accelerated pace of change, public entities purchasing new computer programs or electronic equipment either for their workplaces or for the delivery of program services, run the risk that these new purchases will be inaccessible to people with disabilities.

One-Stop Operators, partners, and other public entities will have access to additional guidance on providing accessible electronic and information environments when the Access Board publishes revised ADAAG standards in the year 2000. The Access Board will define the term "electronic and

information technology,” and will likely include: computers (such as hardware, software, and accessible data such as web pages), fax machines, information/transaction machines (such as ATM's, kiosks, and fare card machines), copiers, telephones, voice-mail systems, pagers, facsimile machines, and related technology), and other equipment used for transmitting, receiving, using, or storing information.

The Access Board's standards will be helpful to any public or private entity seeking to provide an accessible electronic and information technology environment to people with disabilities, but will specifically address compliance with Section 508 of the Rehabilitation Act of 1973. Section 508 requires that electronic and information technology developed, procured, maintained, or used by the Federal government be accessible to people with disabilities. The Workforce Investment Act of 1998 includes Amendments to the Rehabilitation Act that significantly expand the technology access requirements of Section 508.

### **Section 508 of the Rehabilitation Act**

Section 508 requires that any electronic and information technology developed, maintained, procured, or used by Federal agencies<sup>1</sup> be accessible to people with disabilities, including employees and members of the public, unless it would pose an undue burden to do so.

Section 508 regulates only the federal government; however, the Department of Education interprets the Assistive Technology Act (AT Act) to require States receiving assistance under the AT Act to comply with section 508, including the standards established by the Access Board. In other words, though Section 508, on its face, is “limited to the Federal sector,” recipients of Federal funds under the AT Act must also comply with Section 508. The Department of Education, which is the agency responsible for administering the AT Act, is developing guidance to explain how the proposed standards will be applied to the States for purposes of the AT Act. In the interim, the guidelines that are available to assist federal government agencies with compliance are valuable as a technical assistance tool for all state and local government entities (including WIA Title I grant recipients)

seeking to provide accessible electronic and information technology-dependent services to people with disabilities.<sup>1</sup>

Additionally, the US Attorney General distributed a memorandum on April 2, 1999, to the heads of all Federal agencies advising them of Section 508 and its implications, and requiring all federal agencies to conduct a self-evaluation of their current electronic and information technology. The US Department of Justice has prepared a packet of materials to assist with Section 508 compliance. It includes the document, "Information Regarding Section 508 of the Rehabilitation Act;" a list of resources that could be consulted in developing accessible electronic and information technology; and a questionnaire, including accessibility checklists for computer hardware, software, web pages, Information/Transaction Machines (ITM's) such as kiosks, and other Information Technology Equipment, such as computer printers, and fax machines. The Justice Department's 508 package, including accessibility checklists may be obtained at <http://www.usdoj.gov/crt/508/508docs.html>. The accessibility checklists are also included in Appendix XXX.

The Department of Justice Civil Rights Division has prepared a first report of the Executive Branch-wide section 508 evaluation. The report, entitled ***Information Technology and People with Disabilities: The Current State of Federal Accessibility***, also recommends specific inexpensive, cost-effective, and easily accomplishable measures to improve the extent to which federal agencies' technology is accessible to people with disabilities. By following these recommendations, agencies will facilitate their compliance with the general nondiscrimination and reasonable accommodation requirements of **sections 501 and 504 of** the Rehabilitation Act. The Report may be viewed at: <http://www.usdoj.gov/crt/508/report/content.htm>.

## Universal Design

The issue of access to technology is critically important in the purchase of computer hardware and software as One-Stop

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<sup>1</sup>On July 13, 2000, President Clinton signed into law an appropriations bill that includes an amendment to section 508 of the Rehabilitation Act. The amended language delays the effective date for the enforcement provisions of Section 508 to 6 months from publication of the Access Board's final standards. Additional information on Section 508 is available at the Federal Information Technology Accessibility Initiative's website at: <http://www.section508.gov/>.

customers are increasingly seeking information and services through the computer. Technology-dependent self-service enables One-Stop Centers to provide quality services to job-seekers and employers. One-Stop Centers can ensure that technologies are accessible to people with disabilities by designing information environments and products that provide benefits usable by all people, to the greatest extent possible, without the need for adaptation.

Universal design has been defined as “the process of creating products (devices, environments, systems, and processes) which are usable by people with the widest possible range of abilities, operating within the widest possible range of situations (environments, conditions, and circumstances). It involves designing products so that they are flexible enough to be directly used (without requiring assistive technologies or modifications) by people with the widest range of abilities and circumstances as is commercially practical given current materials, technologies, and knowledge; and designing products so that they are compatible with the assistive technologies that might be used by those who cannot efficiently access and use the products directly.”<sup>2</sup>

An example of universal design in the physical environment is the presence of curb cuts that enable people with mobility impairments, parents pushing baby strollers, and travelers pulling luggage carts to navigate safely and easily across city streets. An example of universal design in the electronic environment is the presence of closed-caption decoders in all television sets over 13 inches. This technology was initially developed to provide access to people who are hard of hearing or deaf, and has become a widely used feature by people with a range of abilities, and under a variety of environments, including people for whom English is a second language, by adults who are working to improve their literacy skills, and by people who are working or socializing in noisy environments. Another example is a voice controlled computer that enables users with visual impairments, users with learning disabilities, and users performing other tasks with their hands to access information through the computer.

## **Assistive Technology**

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<sup>2</sup>(Dr. Gregg Vanderheiden, Trace Research and Development Center, University of Wisconsin-Madison, “Universal Design, What it is and Isn’t”, 5/6/96 ).”

One-Stop Operators and partners can often use adaptive or assistive technology as an auxiliary aid or service to make existing information technology accessible to people with disabilities. Assistive technology is defined as “any item, piece of equipment, or product, whether acquired commercially, off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of individuals with disabilities” [29 USCA §3002 (a)(3) the Assistive Technology Act of 1998]. Examples include refreshable braille display, screen magnifiers, screen readers, voice recognition, amplification devices, and alternative mouse devices and keyboards. In many cases, the added technology tools will enhance ease of operation by other users, such as people who access information better by hearing than by seeing. With contemporary information technology advancements, many assistive technology devices are available at very low prices.

### **Software Enhancements or Adjustments**

It is important that all of the computer software in the Center be compatible with any assistive devices that are commonly used by people with disabilities. This allows persons with disabilities to navigate the One-Stop Center and resources without having to request special assistance.

The following provisions can be used as guidelines by information technology specialists when assessing software for compatibility:

- All information and control mechanisms should have external electronic access
- Information needed for the operation of products (e.g., output; alerts; icons; on-line help; documentation) should be available in a standard electronic text format on a cross-industry standard port<sup>3</sup>
- Input to and control of products should allow for real time operation by electronic text input into a cross-industry standard external port and in cross-industry standard format

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<sup>3</sup>On a computer, ports are those locations where information goes into and/or out of the computer. Internally, computers have ports for connecting disk drives, display screens, and keyboards. Externally, computers have ports for connecting modems, printers, mouse, and other peripheral devices.

- The cross-industry standard port should not require, but should provide for, manipulation of a connector by the user
- The software should allow for use without time-dependent controls, or allow the user to modify the timing parameters of any required timed responses

The Government Services Administration, Information Technology Accommodation Division (CITA), has developed a handbook that provides guidance to Federal managers and other personnel on making information resources accessible to users with disabilities. This document is available at <http://www.itpolicy.gsa.gov/cita/front.htm>. Although the guidelines are targeted to federal agencies, they are useful by any agency or group that must provide an information environment that is accessible to its employees and to the general public.

### **Website Accessibility**

While the most commonly used method of ensuring access to web-based information is to provide both graphic-based and text-based versions of documents, a common complaint among blind computer users is that text versions of documents are often neglected and rarely updated after initial dissemination. Provide web masters with a reminder to update **both** versions of a website. Descriptive text should be provided in conjunction with any graphics used on web-based documents. HTML 4.0 provides the alternative text tag (also know as an "ALT Text" or "ALT Tag") for graphics, and some authoring tools such as HotMeTal Pro, HotDog Pro, and Corel Web Designer have built-in prompts for alternative text.

Web pages should be tested using different combinations of screen reading and web browsing software. Screen reading software includes JAWS for Windows, Window-Eyes from Henter-Joyce, and Win Vision from Arctic Technologies. Web browsers typically used by people who are blind include Mosaic, Lynx for Unix, PWWebspeak, and Internet Explorer (preferably version 5). Although Internet Explorer works well with the latest versions of screen reading software, many blind computer users reported that Netscape Navigator at the time of version 4.05 did not work as well. However, the IBM web browser, Home Page Reader 2.5, functions in conjunction with Netscape Navigator and has the capability to speak web-based information just as it is presented on the computer screen. Home Page Reader provides the user with

audible descriptions of graphics, tables, text in column format, and data input fields. Home Page Reader does not yet support JavaScript, which is frequently used to create complex, interactive websites, and users are advised that a screen reader program is still needed in order to use Home Page Reader successfully.

When investigating their information technology, One Stop Access Teams should remain cognizant of the fact that the pace of innovation and development remains rapid and that by the time a team is convening, all of the products mentioned in the preceding or other paragraphs may have been completely superseded by more accessible ones. Teams should conduct the necessary research to find the best products that have become available to facilitate website access as well as other information technology access.

Web pages that activate Java applets remain problematic for blind people using screen access technology. Applets written in the Java programming language can be included in an HTML page, in much the same way as images are included. Since Java is a versatile language that runs virtually everywhere, it has been widely adopted for Web and Internet applications. The accessibility problem arises because once a Java applet has been activated, screen access technology has great difficulty keeping track of what the applet is doing. Although Java creator Sun Microsystems has developed Java accessibility features to make Java-based software compatible with assistive technologies, many products have not yet incorporated these into their designs. Users should be given the option to access a service without having to run the Java applet. For an overview of Java Accessibility features from Sun Microsystems, visit their website at <http://java.sun.com/products/jfc/jaccess-1.2.2/doc/guide.html>. To see guidelines developed by IBM for writing accessible applications using Java, visit the website: <http://www.austin.ibm.com/sns/snsjavag.htm>

## **Website Accessibility Guidelines**

The National Federation of the Blind (NFB), has produced guidelines that ensure maximum accessibility and usability of Web pages by people who are blind. Please refer to Attachment **XXX** or the full list of guidelines.

In 1997, the World Wide Web Consortium (W3C) launched an Initiative to achieve Web Accessibility for people with



disabilities. The W3C's guidelines for web content, authoring tools, and browsers are included in the Department of Justice Section 508 packet mentioned above; they are also available at the W3C website: <http://www.w3.org/TR/WAI/>.

## **Cascading Style Sheets**

W3C developed a language called Cascading Style Sheets (CSS), which allows web page authors to separate or apply stylistic information (e.g., fonts, spacing, color, and aural cues) to the content of documents written in HTML or XML. CSS2 supports media-specific style sheets so that web page designers may tailor the presentation of their documents to a variety of visual browsers, aural devices, printers, braille devices, and handheld devices. An added advantage of CSS is that designers who use it no longer have to develop both graphics-based and text-only versions of their website. Information on CSS and W3C activities is available at their website: <http://www.w3.org/TR/CSS-access>.



## **Bobby**

While Cascading Style Sheets represent the future of Web page authoring, Web designers can ensure that their current web pages are accessible to persons with visual impairments by utilizing Bobby, a free, graphical web-based program. Bobby will perform a series of tests to determine the ways in which a web site is inaccessible to people with a range of disabilities. In order to earn Bobby accessibility approval, web page designers must incorporate elements of HTML 4.0. Bobby can be accessed at <http://www.cast.org/bobby>.

## **Web Access Symbol**

The Corporation for Public Broadcasting/WGBH National Center for Accessible Media (NCAM) has developed a Web Access Symbol that may be pasted into documents in electronic or printed form. The symbol, which is free of charge, may be used by web designers to signal that their site contains accessibility features to accommodate the needs of computer users with disabilities. The image, which consists of a globe, marked with a grid, tilted at an angle, and with a keyhole cut into its surface, should also be accompanied by its description and the following alt-text tag: Web Access Symbol (for people with disabilities). It is available at: <http://www.wgbh.org/wgbh/pages/ncam/webaccess/symbolwinnner.html>. ; or <ftp.wgbh.org>.

## **Kiosks and Information/Transaction Machines (ITMs)**

Kiosks are interactive public terminals that are classified as Information/Transaction Machines (ITMs). Other examples of ITMs are automatic teller machines (ATMs), fare machines, ticket vending machines, and electronic building directories.

Kiosks have become an increasingly popular option for State and Local One-Stop delivery systems that must either serve One-Stop customers over large, remote geographic areas, or that wish to enhance service delivery by placing the kiosks in high volume locations, such as shopping malls. Like computers and websites, kiosks can be made accessible to individuals with disabilities. The Trace Center at the University of Wisconsin works directly with computer companies, software engineers, and government agencies to integrate access features and enhancements into standard kiosks and other devices to make them operable by people who would not otherwise be able to use them.<sup>4</sup> These features do not add substantially to the cost of each kiosk. Information on making kiosks and other ITMs accessible can be found on the Trace Center's website at [www.trace.wisc.edu/world/kiosks](http://www.trace.wisc.edu/world/kiosks).

Kiosks and other types of ITMs are covered under the ADA. Specifications for ATMs have generally been held to apply to all types of ITMs. One-Stop Operators and their partners should provide their kiosk developers both the ADAAG guidelines on ATMs and the Trace Center's guidelines included in "Making Information/ Transactions Machines (ITMs) Accessible." The ADAAG guidelines on ATMs are located in section 4.34 of the ADAAG at <http://www.access-board.gov/adaag/html/adaag.htm#4.34>. The Trace Center's guidelines can be found at <http://trace.wisc.edu/world/kiosks/itms>. It is generally the case that, when kiosks are designed to be accessible to people with disabilities, they are made more accessible or user-friendly to all people.

Information from kiosks should be made available in more than one format to accommodate individuals with disabilities. For example, oral information should also be provided in alternative text format to accommodate individuals who are Deaf/Hard of Hearing. Likewise, text information should also

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<sup>4</sup>The Trace Center has been funded as a Rehabilitation Engineering Research Center through the National Institute on Disability and Rehabilitation Research (NIDRR), at the US Department of Education.

be provided through a voice output mechanism integral to the kiosk or accessible by means of an external connector or infrared link. An accessible kiosk has the capability to present information in a variety of formats (graphic, verbal, braille, etc.) through connection to an assistive device.

## **Touch Screen Kiosks**

Touch screens have historically been difficult to use by individuals who are blind, since the number and location of the keys or “hot spots” on the touch screen continually change during use, and there are no tactile indicators of the number or location of such keys.

The Trace Center’s “EZ Access Features” provide a means to access virtually all of the information and varieties of interfaces on touch screen-based kiosks. The Center’s “EZ Access Features” can be built into standard commercially available kiosks—and also computer workstations—making them accessible to a wide range of people, including people with low vision, blindness, reduced hearing, deafness, physical disabilities, and people who have difficulty or are unable to read. EZ Access Features options include: Talking Touch and Confirm, Speed List, Auto Scan, hearing aid compatible handsets or a headphone jack, and an infrared link. For example, the Talking Touch and Confirm feature enables the kiosk to speak information that appears on the screen, including descriptions of icons or graphics. Users activate selections by touching a “confirm” button. The Talking Touch voice can be regulated to adjust speed, pitch, or volume; and, an on-screen QWERTY keyboard accommodates a range of additional disabilities. The Speed List feature provides people who are blind with easy access to information in the form of a vertical list on the touch screen. The items are read aloud when a finger runs down the list. Selections are activated by pressing a separate confirmation button. Blind users are frequently able to select the same information as sighted users at a faster rate. Finally, an infrared link enables people with a wide range of disabilities to use their own assistive device in conjunction with the kiosk. Like remote controls used for televisions and stereos, the device is not physically connected to the kiosk, yet all buttons and actions are controllable via the infrared link. The Trace Center has additional information on the EZ Access features, including guidelines on implementation of their EZ Access(tm) accessible user interface on their website at: <http://trace.wisc.edu/world/ez/>.

## **PROVIDING ASSISTANCE AT MEETINGS**

### **Registration**

One-Stop Operators and partners can also ensure that individuals with disabilities who will be attending meetings, training sessions, and conferences sponsored by the One-Stop delivery system are provided access to communication that is as effective as the communication all participants receive by utilizing registration forms that include assistive service request options to help identify the needs of participants with disabilities and allow for the arrangement of accommodation prior to events. The example on the following page suggests language that can be included on a registration form.

### **Meeting Planning**

Conference and meeting planners can more easily accommodate a diverse audience by knowing in advance which accessible formats should be provided. Walk-ins can easily be accommodated by having a few additional copies of the conference binder on computer disks in ASCII text format, and large print and braille versions of selected documents, such as the conference agenda. Because brailled documents are quite voluminous, blind conference attendees will frequently prefer a copy of the agenda in braille, and the remainder of the conference or meeting binder on computer disk in ASCII text format. As an additional accommodation, electrical outlets should be available at the conference site, so that attendees who are blind/visually impaired can plug in laptop computers and browse through the disk copy of the conference binder, rather than having to return to their hotel rooms to review conference materials and select conference sessions.

### Accessibility Assistance for Persons with Disabilities

If you have a disability, please specify which, if any, of the following services and/or formats you prefer to have available at the conference.

Interpreting and other services for the Deaf/Hard of Hearing (please chose one):

**Interpreting:**      ☐ ASL                      ☐ Signed English      ☐ Tactile                      ☐ FM Loop

**Transliteration:**      ☐ Sign                      ☐ Tactile                      ☐ Oral

☐ Other (Please specify): \_\_\_\_\_

Alternative Formats for the blind or visually impaired (please choose one):

**Alternative Formats:**      ☐ Large Print              ☐ Regular Print              ☐ Braille

☐ 3.5" Disk              ☐ Audiotape

☐ Other (Please specify): \_\_\_\_\_

If you plan to bring a personal assistant (e.g., attendant, interpreter, etc.) please provide the name as it should appear on the name badge. (Registration fees will be waived for this individual.)

Name of Assistant: \_\_\_\_\_

More frequent breaks, good lighting, and quiet areas for reflection, and “decompressing” are good ways of accommodating conference or meeting attendees with cognitive disabilities, and are beneficial to all attendees. These accommodations will ensure that all participants remain fresh, focused and productive. Once the meeting planner is certain that procedures are in place to make events accessible to as wide an audience as possible, contact key disability consumer groups and keep them informed of all upcoming conferences and events. (This is an effective tool for reaching potential attendees with disabilities.)

The President’s Committee on Employment of People with Disabilities (PCEPD) has produced guidelines on how to communicate with and about people with disabilities. PCEPD points out that “we must look beyond the disability and look at the individual’s ability and capability -- the things that make each of us unique and worthwhile.” Refer to Attachment **XXX** for the full list of guidelines.

### Information and Signage

#### 28 CFR §35.163

##### Information and signage.

(a) A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. (b) A public entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.

As mentioned earlier in the chapter, Section 188 requires appropriate signage at all inaccessible facilities directing users to a location where they can obtain information about accessible facilities; and that the international symbol for accessibility must be used at each primary entrance of an accessible facility [29 CFR §37.9 (e)]. This provision mirrors the Title II provision that covered entities must ensure that interested persons, including persons with impaired vision or hearing, can obtain information about the existence and location of accessible services, activities, and facilities [28 CFR §35.163(a)]. Signs must also be placed at all inaccessible entrances to each of the recipient's facilities directing users to an accessible entrance or to a location where information about accessible facilities can be obtained [28 CFR §35.163(b)]. The international symbol for accessibility must also be used at each accessible entrance of a facility.

Under the Title II regulation, where TTY/TDD-equipped pay phones or portable TTY/TDDs exist, clear signage should be posted indicating the location of the TTY/TDD. Also, the Department of Justice recommends that, in large buildings that have TTY/TDDs, directional signage indicating the location of available TTY/TDDs should be placed adjacent to banks of telephones that do *not* contain a TTY/TDD [28 CFR §35.163 (Preamble)].

Section 504 contains a notice provision similar to the Title II and Section 188 regulations. Recipients of federal financial assistance must adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information about the existence and location of services, activities, and facilities that are accessible to persons with disabilities.

## FUNDAMENTAL ALTERATIONS OR UNDUE BURDENS

None of the federal disability regulations require a One-Stop Operator or partner to take any action that would result in a fundamental alteration in the nature of a service, program, or activity, or in an undue financial and administrative burden [28 CFR §35.164]. This guide has previously discussed fundamental alterations and undue burdens within the contexts of policies, employment, and program and facility accessibility. The provision is similar in the case of auxiliary aids and services.

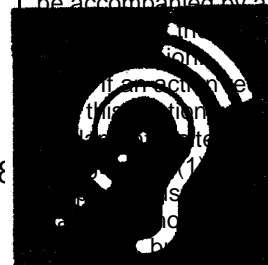
### 29 CFR §37.9 (f)

This section does not require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity.

(1) In those circumstances where a recipient believes that the proposed action would fundamentally alter the



assisted service, the recipient must ensure that the action is necessary to provide the service, and must be accompanied by a written



ensured to comply with the requirements described in this section, the recipient must take any other action that is necessary to ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the recipient.

When a One-Stop Operator or partner cites a fundamental alteration in a program or service or an undue burden as a reason for failing to provide a requested auxiliary aid or service, the regulations place the burden of proof on the entity. A decision regarding whether there is a fundamental alteration or an undue burden must be based on *all* of the resources available for use in the funding and operation of the service, program, or activity [29 CFR §37.9 (f); 28 CFR §35.164].

Under Title II, the decision that compliance would result in an undue burden or fundamental alteration must be made by the head of the public entity or his or her designee. This person should be a high level official--no lower than a department head--who has budgetary authority and who customarily makes spending decisions such as the one in question. In addition, the decision must be accompanied by a written statement of the reasons for that decision [28 CFR §35.164; 29 CFR §37.9 (f)(2)].

***Claiming that an undue burden or fundamental alteration exists does not relieve a public entity of its obligations to provide access for persons with disabilities.*** Even if an entity is not able to undertake a particular measure in order to provide equally effective communication, it must still take other measures, to the maximum extent possible, to ensure that it does not discriminate against individuals with disabilities in any of its activities, programs, services, or benefits [29 CFR §37.9 (f)(3); 28 CFR §35.164].

## **STRUCTURAL COMMUNICATION FEATURES**

Communication features that are structural in nature are those that are fixed or built into the facility. These are not considered auxiliary aids; rather, they are part of the review of the facility for program accessibility. Examples of structural communication features include:

- flashing signals to inform people with hearing disabilities of a fire alarm;
- tactile signage with raised letters to enable people with visual disabilities to use an elevator panel or identify rest rooms, specific room locations, and exits;

- sound amplification devices such as public address systems and amplified receivers to increase the audible information that people with limited hearing are able to perceive; and
- FM broadcast systems to transmit amplified sound to people with limited hearing or descriptive information to people with limited vision.

See Chapter Six for a discussion of requirements related to the assessment of program and facility access.

## **IMPLEMENTING THE REVIEW OF COMMUNICATIONS**

Federal nondiscrimination regulations require that public entities provide communications for persons who have disabilities that are as effective as those available to persons who do not have disabilities. To ensure that this requirement is met, One-Stop Operators and partners should review both their written policies and the actual communications practices of all programs, activities, and services. The required level and quality of communication accessibility has increased over the past decade. As a result, a recipient's self-assessment may well result in the development of new policies and procedures and require significant additional resources.

The approach presented here begins with the orientation of the access team to the communications review. Often, the communications review is combined with the review of policies and practices to ensure conformity with nondiscrimination requirements (Chapter Four) and program accessibility requirements (Chapter Six).

The review focuses on communications throughout the One-Stop delivery system to determine areas in which alternative forms of communication are required, but may be currently unavailable. Finally, information obtained from the communications self-evaluation should be summarized and reviewed carefully by the team to identify current procedures that should be modified, to determine purchases and procurements that should be made or planned to facilitate communication, and to note appropriate sources from which to obtain auxiliary aids and services.



## **Prepare to Conduct the Review**

The review of each recipient's *written policy* may have been conducted in conjunction with the assessments of Chapter Four. A review of One-stop system-wide *communications practices* is also required. This review may be conducted by the access team, by a designated staff, by individuals selected for their expertise regarding communications (including consultants), by trained program staff, or by other appropriate individuals. However, it is the recommendation of this Guide that program staff be actively involved in the review of both policies and practices for the following three reasons:

1. Involving program staff in the early stages of review is often the best way to enlist their understanding and support for implementing change later in the process.
2. The review may identify programs that have communication resources and expertise in place that will be useful to other programs or to the entity as a whole.
3. The process can be used to evaluate the communication functions of each program and to assess the quantity and type of additional communications resources needed.

The team should receive an orientation to the communication issues presented in the present chapter, along with the assessment resources that appear at the end of the chapter.

## **Review Communication Access**

A methodical review of communications support provided in all programs, services, or activities is important, whether a recipient believes they are in full compliance or anticipates some areas of noncompliance. First, through conducting the review, access team members will identify program areas where auxiliary aids and services may be needed in order to provide effective communication. Also, the review process will result in information about the need throughout the One-Stop delivery system for various types and amounts of auxiliary aids and services. The One-Stop Operators and partners will then be able to utilize this information to make system-wide policy decisions and make necessary purchases and procedural arrangements to obtain auxiliary aids and services from providers.

The communications review should cover the following areas:

**Communication in all programs, services, and activities.**

The self-evaluation should review:

- printed information that may limit the participation of people with visual disabilities;
- aural communication (information that is heard) that may limit the participation of people who are deaf or hard of hearing;
- oral information (information that is spoken) that may limit the participation of people with speech disabilities.
- electronic and information technology equipment—both hardware and software—that are used to carry communication and that may be inaccessible to persons with mobility impairments, in addition to those who have visual, hearing, or speaking impairments.

**Telecommunications.** The review must determine the current level of compliance with the following key requirements:

- Since staff members communicate over the telephone with the public, applicants, or program participants, a TTY/TDD or equally effective telecommunication system must be provided.
- If the entity provides emergency telephone services, direct access to a TTY/TDD must be provided.

**Signage and information.** The review must determine compliance with key requirements concerning signage and other means of providing information about accessible communication features. These requirements include the following:

- Accessible entrances must be identified. Signs directing the public to accessible entrances should be provided at all inaccessible facility entrances.
- Information regarding the existence and location of accessible services, activities, and facilities must be provided.

***Resource 7-1, Communication Access Assessment, is designed to assess and document the current ability of***

***programs to provide equally effective communication to people with disabilities.***

***The first part of the resource is completed by filling in charts corresponding to the major categories of communication barriers discussed earlier in the chapter (visual, aural/oral, mobility). On the left-hand side of the charts, list all types of information in each communication category that are involved in the operation of the program. Consider all aspects of the program, including training activities, outreach, advertising, application processes, daily operation, counseling activities, public meetings, and special events. On the right-hand side of the charts are columns with the names of common auxiliary aids and services. Check boxes to indicate auxiliary aids or services that are currently provided or available. Place an X in a box to indicate additional aids or services that may be needed to ensure equally effective communication for persons with disabilities.***

***The second part of the resource contains questions regarding:***

- primary consideration (responding to requests for aids and services),***
- telephone communications and the use of TTY/TDDs,***
- access information and signage, and***
- emergency warnings and evacuation procedures.***

## **Develop Communication Strategies**

Information collected should be summarized to facilitate review and analysis by the access team. By assembling information in a format that enables the team to examine the needs of the entity as a whole, needs can be projected more accurately and strategies adopted with greater confidence. Based on its findings, the team should make recommendations to guide the development of system-wide effective communication resources.

The Team should determine whether communications capacity should be developed in-house or purchased through contracts with outside agencies. Some One-Stop Operators or partners may find it more cost-effective to purchase copiers to make large print documents, or tape recorders for creating audiotapes. Many recipients will find it cost-effective to hire readers and interpreters who can perform other functions as well, on a part-time or even full-time basis depending of the need for these services. Other recipients will find it more cost-effective to contract with other agencies to provide sign language interpreters or to transcribe written documents into Braille.

The analysis of communications resources can target three general types of communications resource development strategies:

1. Local. Establish procedures for optimum sharing of existing or new communications resources at the program or department level, such as magnifying devices and screen reading software.
2. Local Workforce Investment Area. One-Stop Centers can work together to centrally locate resources throughout the local workforce investment area. For example, provide access to a computer with Braille output, a real-time transcription service, or access to video-conferencing.
3. External. Establish standards and procedures for contracting for communications services from sources outside the One-Stop System, such as for sign language interpretation or the production of audio cassettes or CD-ROMs

The access team can also make specific decisions that will be reflected in budgeting and strategic planning. It can, for example, determine the number of TTY/TDDs that must be available and in what locations; the circumstances in which the use of a relay service will be effective; the number of employees who will need training in the use of TTY/TDDs; and the number of readers and interpreters needed. In order to refine these estimates, recipients can track the use of aids and services by people with disabilities over time in order to reflect the actual usage and need. It is recommended that systems be in place to collect this information and to review it periodically by using the expertise of persons with disabilities.

***Resource 7-2, Communication Summary and Action Plan, is designed for use at two levels. It may be used to summarize the results of the Communication Access Assessment covering individual programs, services or activities. The same resource can then be used by the team to generate a summary of existing communications resources of the One-Stop system and communications resources that need to be developed throughout the system. This overall summary should provide a fairly comprehensive picture of the system's communication resources and needs. The resource also documents those situations in which the provision of effective communication would result in a fundamental alteration of the program or in undue financial or administrative burden.***



## Resource 7-1: Communication Access Assessment

*Assess and document the current ability of your program to provide communication for persons with disabilities that is as effective as the communication provided to persons who do not have disabilities.*

### A. Communication Access

#### 1. Visual Communication

Information that is communicated visually--such as through printed materials or visual displays--must be made accessible to people with visual disabilities through auxiliary aids and services.

Does the program involve information that is communicated visually? ☐ Yes ☐ No

In the chart below, list each type of information that is communicated visually. Consider all aspects of the program, including, but not limited to, interview or counseling activities, outreach, advertising, public meetings or hearings, training or group meetings, ceremonies, and communication with the general public, applicants, and other program participants. Examples may include brochures, forms, handbooks, training manuals, slide shows, videotapes, and visual displays.

For each type of information, place a check below the auxiliary aids or services currently available to people with visual disabilities. Place an X below any additional aids or services that may be necessary to provide effective communication of the information. (More than one auxiliary aid or service may be needed for each.)

Types of information:	large print	Braille	audiotape	readers	verbal description	computer disk	computer adaptations	Accessible Website	Other
brochure (example)	X	✓	X	X		X			

## Resource 7-1: Communication Access Assessment

## 2. Aural/Oral Communication

(Note: ("Aural" refers to information that is heard; "oral" refers to spoken information.) Programs that communicate information aurally to applicants or participants or that require an applicant or participant to use oral communication must make that information accessible to people who have hearing or speech disabilities by providing auxiliary aids and services.

Does the program involve information that is communicated verbally? ☐ Yes ☐ No

In the chart below, list each type of information that is communicated aurally/orally. Consider all communication involved in all aspects of the program, including, but not limited to, interview, training, and resource room activities. Consider all aspects of the program, including, but not limited to, training activities, outreach, advertising, public meetings or hearings, small group meetings, ceremonies, and communication with the general public, applicants, and other program participants. A variety of interpreters may be needed, from American Sign Language interpreters to oral interpreters for people who read lips or special interpreters for deaf-blind persons.

For each type of information, place a check below the auxiliary aids or services currently available to people with hearing or speech disabilities. Place an X below any additional aids or services that may be necessary to provide effective communication of the information. (More than one auxiliary aid or service may be needed for each.)

<b>Types of Information:</b>	<b>Interpreters</b>	<b>assistive listening devices</b>	<b>TTY/TDD</b>	<b>telephone amplification</b>	<b>note takers</b>	<b>paper &amp; pen</b>	<b>CART (real time)</b>	<b>captioning on films/videos</b>	<b>video conferencing</b>
jobs forum (example)		X	X	✓	✓			X	X

## Resource 7-1: Communication Access Assessment

### 3. Access with Mobility Impairments

Mobility impairments may affect any of the body limbs, gross muscular systems, or neurological control over arms and hands, legs, neck and head. Mobility impairments may be congenital or the result of accident, illness, or injury. Though individuals may be able to read, write, and speak, they may still have difficulty accessing communication on account of a mobility impairment that makes the means of communication inaccessible. Increasingly, information is communicated and response required electronically—via computer, the Internet, or other means. A One-Stop Operator or partner must ensure that persons with mobility impairments are able to receive and to send information by these means.

Does the program involve information that is communicated electronically? ☐ Yes ☐ No

In the chart below, list each type of information that is communicated electronically. Consider all aspects of the program, including, but not limited to, interview or counseling activities, outreach, advertising, public meetings or hearings, training or group meetings, ceremonies, and communication with the general public, applicants, and other program participants. Examples may include announcements, registrations, forms, handbooks, training manuals, slide shows, and visual displays.

For each type of information, place a check below the auxiliary aids or services currently available to people with visual disabilities. Place an X below any additional aids or services that may be necessary to provide effective communication of the information. (More than one auxiliary aid or service may be needed for each.)

Types of Information									



## Resource 7-1: Communication Access Assessment

### 4. Policies and Procedures on Communication Access

Federal regulations require that public entities and grant recipients provide people with disabilities an opportunity to request the type of communication technology and assistance they prefer to use. In the regulations, communication technology and assistance are called auxiliary aids and services.

An entity must give primary consideration to an individual's preference for an auxiliary aid or service and must honor it unless the entity can provide another effective means of communication.

A public entity is not required to provide an auxiliary aid or service if it would result in a fundamental alteration to the program or in undue financial or administration burdens.

Does the program inform people with disabilities that communication aids or services are provided upon request?

☐ Yes ☐ No

If so, please explain.

Does the program have a procedure for deciding which auxiliary aid or service to provide?

☐ Yes ☐ No

Does the procedure provide for consideration of an individual's preferred aid or service?

☐ Yes ☐ No

Does the procedure include a mechanism for determining that an aid or service provided other than the requested aid or service is an effective means of communication?

☐ Yes ☐ No

If the answer to any of these three questions is yes, please describe. (For questions answered no, solutions will be addressed in Resource 7-2).

## Resource 7-1: Communication Access Assessment

### B. Telecommunications

#### 1. Telephone Communication

When a public entity or federal grant recipient communicates with the public by telephone, nondiscrimination regulations require that TTY/TDDs or equally effective means be used to communicate with people who have hearing or speech disabilities. Title IV of the ADA mandates that telephone companies develop telephone relay systems, which may be effective for short, uncomplicated communications. Public entities should use TTY/TDDs wherever telephone communication is a substantial part of a program's operation. Your answers to the following questions will help you determine whether a TTY/TDD may be essential for your program.

Does the program communicate with the public over the telephone?

☐ Yes ☐ No

If yes, describe the kind(s) of information communicated by phone.

Are telephone communications ever lengthy, complex, or technical?

☐ Yes ☐ No

Does the program have a TTY/TDD?

(If not, solutions will be addressed in Resource 7-2.)

☐ Yes ☐ No

If yes, has the staff been trained in the use of the TTY/TDD?

☐ Yes ☐ No

Describe the training.

#### 2. Telephone Emergency Services

If the program provides telephone access to emergency services, the regulations require that direct access (to the same number(s)) be provided to individuals who use TTY/TDDs; relying on a relay service is not acceptable.

Does the program provide telephone access to emergency services?

☐ Yes ☐ No

If so, does the program provide direct TTY/TDD access to the emergency telephone number(s)?

☐ Yes ☐ No

(If not, solutions will be addressed in Resource 7-2.)

## Resource 7-1: Communication Access Assessment

## C. Other Communication

### 1. Emergency Warning and Evacuation

Emergency evacuation procedures for the program, service, or activity must ensure that people with disabilities are made aware of emergencies and are aware of exit procedures.

Is there a means of ensuring that people who are hard of hearing or deaf are made aware of an activated alarm? ☐ Yes ☐ No

(If not, solutions will be addressed in Worksheet 7-3.)

Is there an established emergency evacuation procedure that addresses the needs of individuals with disabilities? ☐ Yes ☐ No

If not, please describe the procedures the program will use in facilities where means of egress are not accessible to provide safety and evacuation for people who cannot use stairs.

Do staff members receive training in emergency evacuation procedures? ☐ Yes ☐ No  
If yes, please describe.

### 2. Access Information

Federal regulations requires that public entities ensure that people with disabilities can obtain information about the availability and location of accessible programs, services, activities, and facilities. Information regarding the location of accessible entrances, program sites, TTY/TDDs, and other access features can be provided in a number of ways, such as in handbooks and listings. Explain how the program, service, or activity provides access information to program applicants, participants, and the general public.

### 3. Signage

Federal regulations require that signs be placed at all inaccessible entrances to a recipient's facilities, directing users to an accessible entrance or to a location where information about accessible facilities can be obtained. The international symbol for accessibility must also be used at each accessible entrance of a facility. Also, where TTY/TDD-equipped pay phones or portable TTY/TDDs exist, clear signage should be posted indicating the location of the TTY/TDD.

Are signs placed at all inaccessible entrances to each of the facilities, directing users to an accessible entrance or to a location where information about accessible facilities can be obtained? ☐ Yes ☐ No

Is the international symbol for accessibility posted at each accessible entrance of facilities? ☐ Yes ☐ No

Where TTY/TDD-equipped pay phones or portable TTY/TDDs exist, is clear signage posted indicating the location of the TTY/TDD? ☐ Yes ☐ No

(If the answer to any of these questions is no, solutions will be addressed in Resource 7-2.)

## Resource 7-2: Communication Summary and Action Plan

*After reviewing Resource 7-1, summarize the results of the communication access assessment and identify actions needed to achieve compliance with ADA requirements.*

1. Existing Auxiliary Aids and Services	Where are these now available?		
<i>Summarize currently available auxiliary aids and services. Categorize by need (vision, hearing, speech, mobility).</i>	Within Program	Central Location	Outside sources (list)

2. Needed Auxiliary Aids and Services	Where might these be provided?		
<i>Summarize needed auxiliary aids and services to be purchased or contracted. Place an asterisk (*) next to those that will be provided upon request; all others should be available at all times. (Use additional sheets if necessary.)</i>	Within Program	Central Location	Outside sources (list)

## **Resource 7-2: Communication Summary and Action Plan**

### **3. Primary Consideration**

Public entities and federal grant recipients must give each individual with a disability an opportunity to request the auxiliary aid or service of his or her choice. That choice must be given primary consideration and must be honored unless the entity can demonstrate that another effective means of communication is available or that the auxiliary aid or service requested would result in a fundamental alteration in the program or in undue financial or administrative burdens.

Summarize a standardized process for individuals to express their preferences for a particular type of auxiliary aid or service, and the process to ensure that an effective auxiliary aid or service is provided.

### **4. TTY/TDD Communications (Existing and Needed)**

List programs that now have TTY/TDDs and identify programs for which TTY/TDDs should be provided. Identify those programs that provide emergency services for which TTY/TDDs will be provided.

Summarize plans for training staff in TDD use.

### **5. Emergency Warning Systems**

Describe emergency warning systems and procedures, where they are located, and where they will be added or modified.

## Resource 7-2: Communication Summary and Action Plan

### 6. Access Information

Describe how information on access will be communicated to the public, program applicants, participants, and throughout the One-Stop delivery system.

### 7. Signage

As appropriate, describe how the international symbol for accessibility will be placed at accessible entrances to facilities, and describe how signs will be placed at inaccessible entrances to facilities, directing users to an accessible entrance or to a location where information about accessible facilities can be obtained. As appropriate, describe how signage will be posted indicating the location of TTY/TDD-equipped pay phones or portable TTY/TDDs.

### 8. Fundamental Alteration and Undue Burdens

List auxiliary aids or services for effective communications that will not be implemented because to provide them would cause a fundamental alteration to the program or undue financial or administrative burdens. (Use additional sheets if necessary.)

Program	Description of needed auxiliary aids and services, other communication issues	Cost estimate	Explanation of fundamental alteration OR undue financial or administrative burden

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## CHAPTER EIGHT: Compliance Procedures

DRAFT, 7/25/2000

Chapter Two included a discussion of who may file a complaint of discrimination under Section 188. Chapter Four included a discussion of a recipient's affirmative obligation to adopt and publish complaint processing procedures. The present chapter will review these provisions and provide additional information about compliance, EO and nondiscrimination monitoring by the Civil Rights Center of the U.S. Department of Labor, and federal procedures for enforcement.

As the purpose of this guide is to aid recipients in complying with Section 188, this review of compliance enforcement and procedures for processing complaints of discrimination will be more of an overview than topics covered in the previous chapters. The hope is that recipients will have completed the self-assessment and ensured that they are fully in compliance with nondiscrimination regulations, and that they never have to deal with the provisions for processing a complaint. Nonetheless, as complaints are raised from time to time and in the interest of a complete orientation for access teams, it is appropriate to include this overview with the present Guide.

### COMPLIANCE PROCEDURES

Ongoing evaluation of recipient compliance is conducted under the Director of the Civil Rights Center [29 CFR §§ 37.12; 37.13]. Procedures include:

- pre-approval compliance reviews of grant applicants;
- post-approval compliance reviews of grant recipients; and
- investigations of complaints alleging violations of nondiscrimination and EO regulations [29 CFR §37.60].

### Pre-Approval Compliance Reviews

Under Section 188, the Director may conduct nondiscrimination and EO compliance reviews of WIA Title I financial assistance applicants based on their assurances of nondiscrimination and EO as discussed in Chapter Four, based on information or reports filed by the grant applicant, or based on records on file with the Department of Labor [29 CFR §37.62 (a)]. In situations where the Director determines that an applicant might not comply with nondiscrimination or EO provisions, the Director is required to notify the

#### 29 CFR §37.12

**What Department of Labor office is responsible for administering this part?**

The Civil Rights Center (CRC), in the Office of the Assistant Secretary for Administration and Management, is responsible for administering and enforcing the nondiscrimination and equal opportunity provisions of WIA and this part, and for developing and issuing policies, standards, guidance, and procedures for effecting compliance.

#### 29 CFR §37.13

**Who is responsible for providing interpretations of this part?**

The Director will make any rulings under, or interpretations of, the nondiscrimination and equal opportunity provisions of WIA or this part.

departmental grantmaking agency and the Assistant Attorney General of the findings; and issue a Letter of Findings to the grant applicant that gives detail of the preliminary findings and proposes remedial or corrective action, and a time framework for completion of the required action [29 CFR §37.62 (b)].

The Letter of Findings must also extend an opportunity to the applicant to engage in voluntary compliance negotiations; and advise whether the grant applicant will be required to enter into a written Conciliation Agreement [29 CFR §37.62 (b)]. If the applicant agrees to the remedial or corrective action and the time frame, the Department of Labor must ensure that the required actions have been taken or a Conciliation Agreement entered into before further WIA Title I financial assistance can be awarded [29 CFR §37.62 (c)]. If an applicant refuses or fails to take the required action, the Director is required to pursue actions leading to a Final Determination or refer the matter to the Attorney General with recommendations for instituting appropriate civil action [29 CFR §§37.98; 37.99].

Obviously, the above procedures are serious matters. The CRC has the authority to issue subpoenas to secure testimony or documentary evidence [29 CFR §37.61]. The point is not to get into such a situation. Even in a pre-approval compliance review situation where preliminary findings are issued, a recipient has the opportunity to engage in voluntary compliance negotiations. The goal is to reach agreement and compliance; it is not to litigate or create or prolong an adversarial situation.

### **Post-Approval Compliance Reviews**

The CRC Director may conduct a post-approval of any recipient to determine compliance with nondiscrimination and EO provisions, based on the results of routine program monitoring, or the nature or frequency of complaints [29 CFR §37.63 (a)]. Whenever a post-approval review is initiated, the CRC must precede any on-site visits or desk audits with a Notification Letter advising the recipient of the programs and practices to be reviewed, and the information, records, or other data that are to be submitted by the recipient within 30 days [29 CFR §37.63 (b)]. At this notification stage, a recipient is also to be advised of its opportunity, which will continue until its receipt of a Final Determination, to provide documentary or other submissions that explain, validate, or otherwise address the practices under review [29 CFR §37.63 (b)(4)].

Following a post-approval compliance review, the Director must communicate to the recipient in writing, whether or not there is any finding of noncompliance. Where there is a finding of noncompliance, the Director is required to issue a Letter of Findings that includes the same four elements as in a pre-compliance review:

- the preliminary findings
- proposed remedial or corrective action along with a time frame for completion;
- whether it will be necessary for the recipient to enter into a written assurance and/or Conciliation Agreement; and
- opportunity to engage in voluntary compliance negotiations [29 CFR §37.64].

In the event that a recipient fails to submit to the CRC the information requested in the Notification Letter; information, records, or data requested during a compliance review or complaint investigation; or to provide CRC with timely access to the recipient's premises, employees, or records during a compliance review; the Director may issue a Notice to Show Cause [29 CFR §37.66]. The notice to show cause gives a recipient 30 days to show why enforcement proceedings should not be instituted. A notice to show cause must specify the violation(s) with citation to the specific provision(s) of federal regulations; give detail of a particular corrective action that must be taken or the principles of acceptable action that are necessary; and request written response, including the commitment to corrective action or the presentation of opposing evidence [29 CFR §37.67].

A recipient may show cause why enforcement proceedings should not be instituted by demonstrating that the alleged violation(s) did not occur; correcting the violation(s) or entering into a written assurance or Conciliation Agreement [29 CFR §37.68]. If the a recipient fails to show cause, the Director must follow specified enforcement procedures [29 CFR §§37.69; 99; 100].

### **Federal Enforcement Procedures**

Federal enforcement procedures begin with the Director making a formal conclusion that compliance cannot be secured by voluntary means [29 CFR §37.98]. In such an event, the Director must either refer the matter to the Attorney General, with recommendation to initiate appropriate civil action; issue a Final Determination; or take such other action

#### **29 CFR §37.96**

##### **What are the required elements of a written assurance?**

A written assurance must provide documentation that the violations listed in the Letter of Findings, Notice to Show Cause or Initial Determination, as applicable, have been corrected.

#### **29 CFR §37.97**

##### **What are the required elements of a Conciliation Agreement?**

A Conciliation Agreement must:

- (a) Be in writing;
- (b) Address each cited violation;
- (c) Specify the corrective or remedial action to be taken within a stated period of time to come into compliance;
- (d) Provide for periodic reporting on the status of the corrective and remedial action;
- (e) Provide that the violation(s) will not recur; and
- (f) Provide for enforcement for a breach of the agreement.

#### **29 CFR §37.100 (f)**

A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, one or more of the following consequences may result:

(1) After the grant applicant or recipient is given the opportunity for a hearing, its WIA Title I funds may be terminated, discontinued, or withheld in whole or in part, or its application for such funds may be denied, as appropriate;

(2) The Secretary of Labor may refer the case to the Department of Justice with a request to file suit against the grant applicant or recipient; or

(3) the Secretary may take any other action against the grant applicant or recipient that is provided by law;

as may be provided by law [29 CFR §37.99]. A Final Determination must include the following elements:

- a statement of the efforts made to achieve voluntary compliance, and that those efforts have failed;
- a statement of the matters about which there remains disagreement between the recipient and the CRC;
- a list of any modifications to the findings and conclusions that were outlined in the Initial Determination, Notice to Show Cause, or Letter of Findings;
- a statement of the extent of the recipient's (or applicant's) liability;
- a description of the corrective or remedial actions that the recipient (or applicant) must take to come into compliance;
- a notice that if the recipient (or applicant) fails to come into compliance within 10 days of receipt of the Final Determination, one or more consequences may result: following the recipient's or applicant's opportunity for a hearing, its WIA Title I funds may be withheld or discontinued or its application denied; the Secretary of Labor may refer the case to the Department of Justice with a request to file suit against the recipient or applicant; the Secretary may take any other action against the recipient or applicant as is allowed by law [29 CFR §37.100].

## COMPLAINT PROCEDURES

As was discussed in Chapter Two, any person who believes that he or she, or any group of individuals, has been subjected to one of the forms of illegal discrimination, may file a written complaint by him or herself, or through a representative such as legal counsel [29 CFR §37.70]. A complaint may be filed with the recipient who has conducted the alleged discriminatory action and/or with the CRC [29 CFR §37.71]. Ordinarily complaints must be filed within 180 days of the alleged discrimination; they should be accompanied by CRC's Complaint Information and Privacy Act Consent form; and must include specified information, including the complainant's (or their representative's) signature and contact information, the alleged agent(s) and acts of discrimination; and sufficient detail of the allegations to enable the CRC to respond [29 CFR §§37.72-74].

A recipient's complaint processing procedures were discussed in Chapter Four. Briefly, they call for:

### **29 CFR §37.70**

#### **Who may file a complaint concerning discrimination connected with WIA Title I?**

Any person who believes that either he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIA or this part may file a written complaint, either by him/herself or through a representative.

- an initial written notice, acknowledging receipt of the complaint and alerting complainants to their right to representation in the complaint process;
- a written statement of the issues raised by the complainant along with a response indicating whether the recipient will accept or reject each issue for investigation;
- an appropriate period for fact-finding;
- a period for the recipient to attempt resolution;
- offering the complainant the option of entering into alternative dispute resolution (ADR); and
- a written Notice of Final Action within 90 days, including the disposition of the issues and notice of the complainant's right to file a complaint with the CRC within 30 days if dissatisfied with the outcomes [29 CFR §37.76].

In some instances a complaint may be received by a recipient that believes it does not have jurisdiction over the complaint. In such a situation, the recipient must notify the complainant immediately in writing with the reasons for its determination and also advising the complainant of his or her right to file a complaint with the CRC within 30 days of receiving the Notice of Lack of Jurisdiction [29 CFR §37.78].

In other instances, a complainant may be dissatisfied with a recipient's Notice of Final Action or a recipient may fail to issue such notice within the required 90 days. In either case, the complainant or his/her representative has the right to file a complaint with the CRC – within 30 days of either the receipt of the unsatisfactory Notice of Final Action or the expiration of the 90 day response period [29 CFR §§37.79-80].

Whenever the CRC accepts a complaint for resolution, the Director must notify the complainant, the respondent, and the grantmaking agency [29 CFR §37.87]. Following investigation of the complaint, the Director must again notify the complainant, the respondent, and the grantmaking agency of the determination whether there is reasonable cause to believe that a nondiscrimination violation has occurred [29 CFR §37.90]. In those cases where the Director finds reasonable cause to believe that the recipient has violated nondiscrimination regulations, he or she must issue an Initial Determination, much like the Letter of Findings in a compliance review, that includes

- the preliminary findings
- proposed remedial or corrective action along with a time frame for completion;

- whether it will be necessary for the recipient to enter into a written agreement; and
- opportunity to engage in voluntary compliance negotiations [29 CFR §37.64].

Where the Director finds that there is not reasonable cause to believe that a violation has occurred, he or she must issue a Final Determination, as described above in the section on Federal Enforcement Procedures [29 CFR §37.92].

The regulations in 29 CFR §37 include additional procedures regarding hearings [§37.111], sanctions [§37.110], the breach of conciliation agreements [§§37.102-105], and other legal matters. As was mentioned above, a nondiscrimination violation or a complaint investigation are very serious matters. The overall purpose of the regulations in this regard is to ensure due process for all parties -- complainants as well as respondents, recipients, or applicants. Each step in the resolution process includes opportunity for the party alleging violation to clearly specify its case and for the responding party to correct the situation or to explain why it is not a violation. Time windows of 30 and 90 days are intended to bring swift resolution to a dispute; and alternative dispute resolution (ADR) is offered to bring resolution without judicial proceedings. These experiences where there is a complaint or a violation are unfortunate and often unpleasant. However, experience has shown that the detailed specification of procedures beforehand, and guarantees of due process built into the system help to ensure that all parties are treated fairly and that disputes are resolved in as uncomplicated a manner as possible.

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